Public Legal Education
and Information Service
of New Brunswick

Doing Your Own Divorce In New Brunswick

COURT OF QUEEN'S BENCH
BRUNSWICK

DIVISION

DISTRICT OF _____

PETITIONER

-and-

RESPONDENT

COUR DU BANC DE LA R
NOUVEAU-BRUNSWICK

DIVISION DE LA FAMILLE

CIRCONSCRIPTION JUDICIAIRE

ENTRE :

- et

REQUÊT

Public Legal Education and Information Service of New Brunswick (PLEIS-NB) is a non-profit organization. Its goal is to provide New Brunswickers with information on the law. PLEIS-NB receives funding and in-kind support from the Department of Justice Canada, the New Brunswick Law Foundation and the New Brunswick Department of Justice.

This guide was originally researched and written in 1990 by Ginette Thériault for the New Brunswick Advisory Council on the Status of Women (ACSW). PLEIS-NB was pleased to take over this project in 1998. PLEIS-NB produced the ninth and tenth editions, which included updated materials and revisions to reflect changes in procedure and substantive law, such as the introduction of the Child Support Guidelines. As well, PLEIS-NB undertook a plain language edit. Justice Canada provided special project funding to help with the preparation and printing of the ninth edition. In 2005, the Child-centred Family Justice Fund of Justice Canada provided funding for a thorough redrafting and updating of the guide. In 2005, Deborah Doherty Ph.D. and Kelly Buffett B.B.A. LL.B. rewrote the content to make it clearer and more understandable, as well as restructuring the guide into a more logical sequence of steps that would be simpler for users to follow. In 2009, PLEIS-NB felt it was necessary to update the guide again. The eleventh edition reflects various substantive changes over the past few years and amended forms. We have attempted to make the instructions clearer and have added a chart called "Checklist for Getting Your Divorce". This will help the user review the steps in the guide to make sure he or she has not forgotten anything.

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Please Note: This guide does not offer legal advice. The guide is for general information only. It does not contain a complete statement of the law in the area of family law, and laws change from time to time. PLEIS-NB and its contributors are not responsible for errors and misunderstandings. If you have a problem or question, consult a lawyer.

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Introduction to Doing Your Own Divorce

The purpose of this guide is to assist individuals, when appropriate, to prepare the required documents and forms in order to file for their own divorce.

If your marriage has broken down and you are thinking about using this guide to file for a divorce, please read through it very carefully. First, you should determine if the guide is intended for your situation. Next, you should become familiar with the process, the forms and documents that are appropriate in your situation, the timelines, and the procedures for filing and serving documents in a proper fashion. If you and your spouse are thinking of getting back together or there is any possibility of reconciliation, consider going to a marriage counsellor. Ordinarily, the court must postpone a divorce if there is a possibility of reconciliation between the spouses.

This guide is designed for use when...	This guide is not recommended when....
Family Law Matters Settled – You and your spouse have already settled issues related to your marriage, such as support, custody and division of marital property. For more information about family law issues that you should settle before using this guide, see Appendix 3 – **Issues Related to Marriage Breakdown**.	You have not settled all of your family law issues such as support, custody and property division.
Uncontested – You do not expect your spouse to oppose the divorce.	You believe that your spouse will contest the divorce.
Using Separation as Reason for Marriage Breakdown – You have been separated for at least one year and this is the reason for your divorce.	You want to file for divorce based on adultery or cruelty. This is a more complicated process and you should hire a lawyer. (Rather than using either of these grounds, you may decide to use this guide on the basis of the one-year separation.)
Know where your Spouse Lives – You know where your spouse is and you can arrange to have a third party serve the documents on your spouse.	You do not know the whereabouts of your spouse.
Resident of New Brunswick – You and/or your spouse have lived in New Brunswick for at least one year.	Neither you nor your spouse has been a resident of New Brunswick the past year.

When can I get a divorce?

To apply for a divorce, you must be able to show that there has been a **breakdown of the marriage** (for more information, see Appendix 3). Marriage breakdown means that either

- you have lived separate and apart for one year (includes living under the same roof if you are living as though you are separate and apart), **or**
- one spouse has committed adultery, **or**
- mental or physical cruelty has made it intolerable for the spouses to continue to live together.

Although a divorce legally ends a marriage relationship and frees the spouses from their obligations to each other under the marriage, under the *Divorce Act* the Court may require one spouse to financially support the other. Divorce does not change the rights and obligations that parents have to children of the marriage. Parents are still obligated to support their children financially. The children are also entitled to contact with both parents. To use this guide, you should first settle all your related family law matters.

Do I need a lawyer?

If you meet the criteria set out above, normally you do not need a lawyer to do a divorce. However, if you have complications during the divorce process, you should consult a lawyer. You should also consult a lawyer about your rights and interests relating to custody, access, support and division of marital property. Consider hiring a lawyer to review your documents before you hand them in to the court.

How much will a divorce cost?

Using this guide, the cost should be between $125 and $225. The basic cost of the divorce includes the $100 fee for filing the **Divorce Petition**, the $10 fee for the **Clearance Certificate** and the $7 fee for the **Certificate of Divorce.** If you are receiving assistance under the *Family Income Security Act* or from the Domestic Legal Aid Program, there is no filing fee for a divorce application.

Other costs may include:

- this guide
- copies of legislation
- hiring a lawyer for specific questions or tasks
- certified copies of birth and marriage certificates
- purchase of pre-printed forms (usually $1 at the court)
- hiring someone to type forms that are not pre-printed
- photocopying of documents
- hiring someone to serve documents
- fees for a Commissioner of Oaths
- fees for refiling if your documents are incomplete
- fees for witnesses

Checklist of Steps to Doing Your Own Divorce

Doing your own divorce will involve some or all of the following "steps". Please read the entire guide carefully before you prepare and file your documents. If your documents are not properly prepared, the court will send them back to you. This will cost you time and money. Use this checklist often to make sure you are proceeding as you should.

STEP ONE: Prepare Your Petition for Divorce

STEP TWO: File the Petition (along with your fees) with the Registrar's Office

Wait for the Court to Return the Original Petition to You with a court file number
(You will also have to wait for your Clearance Certificate, but you can start preparing before it arrives)

STEP THREE: Arrange for Service of the Divorce Petition and Attachments on Your Spouse **(Skip this step if you are doing a Joint Petition)**

Wait for the Respondent (your spouse) to Reply
See the time lines allowed depending on where the respondent lives.

STEP FOUR: Prepare the Trial Record

Wait for your clearance certificate – everyone must wait for this.

STEP FIVE: File the Trial Record (with the Court Administrator of the Court of Queen's Bench, Family Division in YOUR Judicial District)

STEP SIX: Get Your Divorce Judgment

Wait for the 30 day appeal period to end.

STEP SEVEN: Ask for Your Certificate of Divorce

Documents You May Need

This guide provides examples of the forms, letters and documents you may have to file when doing your divorce. Most of the examples are integrated into the guide at the appropriate place. Others can be found in Appendix 1 and 2. You should note that only some of the forms are preprinted – meaning ready for you to obtain and fill in. **You must create the others yourselves.** These examples should help you understand how to fill in the forms or create and complete the necessary letters and the affidavits.

See **Appendix 7** for more information about creating and filing documents.

Examples of Documents You May Need

Example Number	Type of Document	What you must do
Example E.1.1 See pg 43 (Appendix 1)	**Petition for Divorce (Form 72A)** This is a preprinted form	You can buy this form for $1 at the court. Review example on how to fill it out as a sole petitioner. Attach cheques for filing fee ($100), clearance certificate ($10), marriage certificate and any required financial information.
Example E.1.2 See pg 56 (Appendix 1)	**Joint Petition for Divorce (Form 72B)** This is a preprinted form	You can buy this form for $1 at the court. Review example on how to fill it out when you are both petitioners. Attach cheques for your filing fee ($100) and clearance certificate ($10), marriage certificate and any required financial information. Note: Only use a Joint Petition if you have settled all issues and are able to fully cooperate with your spouse.
Example E.2: See pg 14 (Step 2)	**Cover Letter** This is not a form	Type this letter to go with your Divorce Petition and attachments when you file.
Example E.3: See pg 23 (Step 3)	**Personal Service (Affidavit of Service – Form 18B)** You have to create this form	If you use personal service you must create this form for your server. The example shows you how the server must fill it out. The server must have it witnessed by a Commissioner of Oaths. Note: The Petitioner is not permitted to serve the Petition. It must be served by another adult.
Example E.4: See pg 24 (Step 3)	**Service by Registered Mail (Affidavit of Service – Form 18B)** You will have to create this form	If you use service by registered mail, you must create Form 18B. The example shows how the server must fill it out. It must be witnessed.

Note: Each sample form or document contains hypothetical information that is clearly identifiable as blue or handwritten text. When you fill in your own forms, or create your own documents, you must replace the relevant information with your own accurate information. You can also find the Forms of Court (http://www.gnb.ca/0062/regs/Form/form_liste.htm) and Rules of Court (http://www.gnb.ca/0062/regs/Rule/rule_list.htm) on the government of New Brunswick's web site at www.gnb.ca under 'Acts and Regulations'.

Examples of Documents You May Need

Example E.5: See pg 25 (Step 3)	**Acknowledgment of Receipt Card (Form 18A)** You have to create this form.	You must create this card for your server to serve on your spouse, or to enclose with service by registered mail or courier.
Example E.6: See pg 28 (Step 4)	**Cover Letter for the Trial Record** This is not a form.	You must prepare this cover letter. The example shows how to proceed by either affidavit evidence or court hearing.
Example E.7: See pg 29 (Step 4)	**Cover Page for the Trial Record** This is not a form.	You must prepare this cover page for the Trial Record.
Example E.8: See pg 30 (Step 4)	**Index for the Trial Record** This is not a form.	You must prepare this index, which is like a table of contents, for the Trial Record. The example shows how to list your documents depending on whether you proceed by affidavit evidence or by trial.
Example E.9: See pg 31 (Step 4)	**Certificate of Readiness** (affidavit evidence) You have to create this form.	You must create this form and complete it for the Trial Record. The example shows you how.
Example E.10: See pg 32 (Step 4)	**Request for Divorce (Form 72K)** You have to create this form.	You must create and complete this form for the Trial Record if you are proceeding by affidavit evidence only.
Example E.11: See pg 34 (Step 4)	**Petitioner's Affidavit** (for a Petition for Divorce by one spouse) This is not a form.	This is a signed written statement of facts that you swear or affirm is truthful. The example shows you how it might look. Section 2 sets out the information you need to include in your affidavit. It MUST be witnessed by a Commissioner of Oaths not more than 5 days before filing your Trial Record.
Example E.12 See pg 38 (Step 6)	**Agreement Not to Appeal (Form 72L)** You have to create this form.	If you are asking to have the divorce take effect earlier than the 31st day after the Divorce Judgment, you must create this form and set out the special circumstances that justify the earlier date.
Example E.13 See pg 40 (Step 7)	**Letter to Request a Certificate of Divorce** This is not a form.	You can also apply at a Service New Brunswick Centre or access a Request Form on SNB's website.
Example E.14: See pg 75 (Appendix 6)	**Notice of Discontinuance** (Form 25A) You have to create this form.	

Examples of Documents You May Need			
	Example E.15 See page 65 (Appendix 1	**Affidavit Supporting Joint Petition** This is not a form	This is a signed written statement of facts that you and your spouse as joint petitioners swear or affirm is truthful. It MUST be witnessed by a Commissioner of Oaths not more than 14 days before filing your Trial Record.
	Example E.16 See page 67 (Appendix 2)	**Index for the Trial Record** **(Court Hearing)** This is not a form	You must prepare this index which is like a table of contents, for the Trial Record.
	Example E.17 See page 68 (Appendix 2)	**Certificate of Readiness** **(for Court Hearing)** (Form 47B) You have to create this form	You must create this form and complete it for the Trial Record.

Tips for Preparing Your Documents

- Prepare court documents carefully.
- Read the blank forms and look at the examples before you start.
- Prepare the document using the bilingual format (Form 72A), but only fill in the form in either English or French. See Example E.1.1 and E.1.2 on pages 43 and 56.
- All documents that you prepare for the court must be on white paper.
- It is the custom to use legal-size paper (8 $^{1}/_{2}$" x 14").
- Use only one side of the page.
- Leave margins about 4 centimetres (1 $^{1}/_{2}$") wide on all four sides of the page.
- You should type and double-space (at least one and a half lines) all documents.
- Do not use handwriting. You can print if your printing is neat and legible.
- If you print, use a pen with black or blue ink. Do not use a pencil.
- The court may return any documents that are not easy to read.
- Make sure that you fill out the forms completely.
- Place the court file number that was stamped on your original petition on all the other documents that require it.
- You must sign the original. Make sure you type or print your name clearly underneath the signature.
- Always make an extra copy of the documents for your own records.

Step 1: Prepare Your Petition for Divorce

This section of the guide explains how to prepare your *Petition for Divorce*. To do this you will have to do the following things:

1.1 Decide the type of divorce petition you want to use

1.2 Get the Petition for Divorce Form

1.3 Gather all the documents that you need to attach to your petition
(Rule of Thumb: You have to attach any document you mention in your Petition)

1.4 Complete the Petition

1.1 Decide the Type of Divorce Petition to Use

When you apply for a divorce you must decide whether you will file by yourself and use the **Petition for Divorce -Form 72A** or file together with your spouse and use the **Joint Petition for Divorce - Form 72B** (if you are able to fully cooperate with each other). Here is what you should know about divorce petitions:

Petition for Divorce (by one spouse) – Form 72A
With this method, **one spouse** fills out the **Petition for Divorce – Form 72A.** This spouse becomes the petitioner. If you use this procedure, you must make sure the documents are served by another adult on your spouse, who will be the *respondent* in the proceedings. When you use Form 72A you will have to arrange for service of a copy of the petition and attachments on your spouse and **wait the appropriate length of time** for your spouse to file an Answer. If you spouse does file and serve an Answer, you must proceed by way of a court hearing. You should seek legal advice.

If an Answer is not served on you, you can file your Trial Record including your **Affidavit of Evidence**, which must be sworn to or affirmed in front of a Commissioner of Oaths not more than 5 days before you file the Trial Record.

Joint Petition for Divorce (by both spouses) – Form 72B
With a joint petition, the spouses fill out a **Joint Petition for Divorce – Form 72B**, which they **both** must sign. You and your spouse are both *petitioners*, so you do not have to serve your spouse or wait for an Answer. You and your spouse have the choice of preparing a joint affidavit or two separate affidavits. You **both must swear to or affirm the joint affidavit**, or you must **each swear to or affirm your individual affidavits**, not more than **14 days before you file the Trial Record.** This method may be appropriate if you and your spouse are able to cooperate, you live in close proximity and can easily communicate with one another.

All your forms and documents must be signed by both of you, including the joint affidavit of evidence. Although you skip service with this method, the process may not be any shorter if you and your spouse live in different provinces, or even different cities. You may have to courier documents back and forth in order to meet filing deadlines.

Note: No matter which petition you use, you MUST wait for the Clearance Certificate, before you file the Trial Record.

1.2 Get the Petition for Divorce Form

You can find the Petition for Divorce (Form 72A or 72B) in the Forms of Court at http://www.gnb.ca/0062/regs/Form/form_liste.htm. You can get a Petition for Divorce (Form 72A, or a Joint Petition for Divorce - 72B) from the office of the Court of Queen's Bench, Family Division, in your judicial district - see Appendix 5 for court addresses. **The form costs one dollar.** Or, you can request either of these forms from:

Registrar Services, Court of Queen's Bench
427 Queen Street, Room 202
P.O. Box 6000, Fredericton NB E3B 5H1
Telephone: (506) 453-2452

1.3 Gather Documents to Attach to the Petition

There are a number of documents that you must attach to your Petition when you file it. Read this section carefully to find out what these documents are, who needs to attach which documents and how to get them.

❑ Marriage Certificate – Everyone Must Attach This

You must attach an original marriage certificate. This is the certificate signed on the day you were married or a certified certificate provided by a provincial administration in the province where you were married. It is best NOT to use a wallet size marriage certificate because some courts do not accept them.

You must make every effort to get your marriage certificate. Without it, a judge may not be able to grant your divorce. If you cannot find your marriage certificate and you were married in New Brunswick, here is how to get an original.

Go to nearest Service New Brunswick Centre or write to the address below to get an application. You can also apply online at https://www.pxw1.snb.ca/snb7001/b/1000/CSS-FOL-35-2262B.pdf. You will need a cheque or money order for $25, made payable to SERVICE NEW BRUNSWICK.

Mail the form and the cheque or money order to:

SERVICE NEW BRUNSWICK
VITAL STATISTICS
P.O. BOX 1998, FREDERICTON, NB E3B 5G4
Telephone: (506) 453-2385
Fax: (506) 444-4139

For people married in another Canadian province, or outside Canada, go to Appendix 4 for information on how to get your marriage certificate.

❑ Separation Agreement and Any Court Orders from Family Court Proceedings

Attach a copy of your Separation Agreement if you have one, as well as any court order from a previous family court proceeding.

❑ Financial Statement and Other Income Information (Form 72J)

There are a number of situations which require that one or both parties - the petitioner(s) and/or the respondent - file financial statements and other income information. (Note: You must swear to the truthfulness of the financial statement before a Commissioner of Oaths). Generally, whenever a divorce petition involves dependent children, you should include a **Financial Statement (Form 72J)**. Under the *Divorce Act*, judges have an obligation to ensure that you and your spouse have made appropriate arrangements to support the children of the marriage in accordance with the **Child Support Guidelines.**

Child Support Guidelines:
You can find the *Federal Child Support Guidelines* online under the Regulations of the *Divorce Act* in http://laws.justice.gc.ca/en/D-3.4 /SOR-97-175/index.html.

Or call PLEIS-NB at 1-888-236-2444 and ask to have a free copy mailed to you.

The payor will be required to attach the following income information:

- copies of your income tax returns for the last three tax years,
- copies of all your income tax assessments and re-assessments for the last three tax years, and
- a copy of your most recent statement of employment earnings

Note: If you and your spouse agree on income figures, you only need to file copies of your income tax returns, assessments and re-assessments for the past year instead of the past three years.

As well, the Court requires that both parties submit Financial Statements when the petition includes requests for special expenses under the child support guidelines, division of marital property without an existing separation agreement or order, and/or requests for spousal support.

If your petition includes a request for these things, when you arrange service of the divorce petition on your spouse, he or she must file a financial statement with the Court within the allowable time.

Spousal Support Advisory Guidelines (SSAG): Spouses are not automatically entitled to receive spousal support. Justice Canada has developed the SSAG to help lawyers, judges and individuals estimate spousal support. They are not mandatory. You can view the SSAG on the Internet: http://www.justice.gc.ca/eng/pi/pad-rpad/res/spag/ssag_eng.pdf.

If your spouse refuses to file a financial statement, then you cannot prove to the court that you made an appropriate arrangement for the support of your child(ren). The court will postpone your divorce. ***If your spouse refuses to file a financial statement, you will need a lawyer to help you.***

Play it Safe:
Whether or not you are required to file a Financial Statement and other income information, it is a good idea to do so whenever child support or spousal support is involved. If you have children, it is better to include a Financial Statement even if you and your spouse have agreed on child support. The information may be useful to the judge.

1.4 Complete the Petition for Divorce

There are two examples of divorce petitions in this guide.

- **Example E.1.1. Petition for Divorce (by one spouse) - Form 72A, page 43**
- **Example E.1.2. Joint Petition for Divorce (both spouses) - Form 72B, page 56**

Here are some tips for completing your divorce petition:

- Before you actually prepare your petition, please carefully **read Page 8 for Tips for Preparing Your Documents** and review **Appendix 7.**
- You must fill out the bilingual petition in either English or French. Read the form before you start. You only need to complete one side of this form (either the English or French side.)
- Leave the Court File Number blank. At this point you will not have a number. The Registrar only stamps a court file number after you file your original divorce petition.
- Give your full name as it appears on the marriage certificate.
- Give the full name and address of the respondent. Your spouse is the respondent.

- Fill in the judicial district where you live. Your judicial district is the place in New Brunswick where either spouse ordinarily resides. One of you must have lived in New Brunswick for at least a year before applying for divorce. There are eight judicial districts in New Brunswick. See Appendix 5 to find the judicial district for your county.
- Paragraph 1 - CLAIM – Make your claim very clear. Paragraph 1 of the Petition must set out precisely everything you want the Court to include in the divorce judgment [Paragraphs 1 and 7 must be identical]. If you are asking the court for custody or access, write the request in this place. Write down if you are asking for support for yourself or a child. If you would like to have provisions of a separation agreement included, refer specifically to the provisions. Attach a copy of the separation agreement to the Petition for Divorce.
- Write the language (English or French) you prefer to use in the divorce hearing, if there is a hearing.
- Paragraph 3- RECONCILIATION – If you and your spouse did not try to reconcile, strike out paragraph (b). If you did try to reconcile, write out what efforts you made.
- Paragraph 4- PARTICULARS OF MARRIAGE – Attach your original marriage certificate. Make sure that the information in the Petition for Divorce is the same as the information on the marriage certificate.
- Paragraph 4b - Place the name at birth in this space, rather than a former surname from a previous marriage.
- Paragraph 5 - RESIDENCE AND JURISDICTION – Residence means the place where you are now living. Under the *Divorce Act* **one of the parties must live in New Brunswick for at least one year before filing a Petition for Divorce in New Brunswick.**
- Paragraph 7 - CHILDREN – Check whether the support arrangements proposed in paragraph 7(k) agree with the child support guidelines. You only need to write down the children that are dependants (under 19 years of age or adult children who are disabled or enrolled fulltime in post secondary education). If you are not sure, contact a lawyer for legal advice.
- Paragraph 8 - OTHER COURT PROCEEDINGS – Give the details if you or your spouse has started other court proceedings concerning the marriage or the children of the marriage.
- Paragraph 9 - SEPARATION AGREEMENTS – Give details about any agreements and attach a copy.
- Paragraph 10 - COLLUSION, CONDONATION AND CONNIVANCE – Strike out paragraph 10(b) because condonation and connivance apply to adultery or cruelty.
- Paragraph 11 - PLACE OF TRIAL – The place of trial must be the same as the judicial district that you put at the top of your Petition.
- Paragraph 12 - DECLARATION OF PETITIONER – Include your full address. It must be a street address.
- Make sure all sections of the petition are completed. Strike out any section of the petition that is not relevant.
- Sign and date the petition on the last page and include your address under your signature. If you are filing a joint petition make sure that it is signed by both parties (you and your spouse) and include both addresses.
- When you sign the divorce petition, you do NOT have to have your signature witnessed by a Commissioner of Oaths. Later in the process when you prepare and file your Trial Record, and you are proceeding by affidavit of evidence, you must have your affidavit sworn

to or affirmed in front of a Commissioner of Oaths. See Appendix 7 for more information on swearing documents.

- If you make reference to a document you will need to attach it to the petition.
- Check with the Registrar's office for changes.

Consider taking your petition to a lawyer to have it reviewed before you file it.

You must not file your petition until you have all the documents you need to attach to it.

Step 2: File the Petition for Divorce and Attachments

This section of the guide explains how to pull together all your documents and file your *Petition for Divorce*. To do this you will have to do the following things:

2.1 Prepare a Cover Letter and a Legal Size, Self-Addressed Envelope

2.2 Photocopy all your Documents

2.3 Get Cheques or Money Orders for all Required Fees

2.4 Put Together All Required Documents and Fees

2.5 File your Petition

2.1 Prepare Cover Letter and Legal Size, Self-Addressed Envelope

Here is an example of the cover letter. It is recommended that you include a daytime telephone number so the Registrar's Office can reach you if there are any questions.

Example E.2. Cover Letter for filing your Petition

2 Poplar Street
Moncton, NB C1C 1A1
January 15, 2005

Registrar Court of Queen's Bench
P.O. Box 6000
Fredericton, NB E3B 5H1
(or if hand delivered - Justice Building, 427 Queen Street, Room 202)

Dear Sir or Madam:

You will find enclosed the original and one copy of my Petition for Divorce. I have attached [list the attached documents] and cheques [or money orders] covering the filing fee and the cost of the Clearance Certificate.

Please return the documents to me at the above address. If you need to reach me about this petition, I can be reached during the daytime at 555-1234.

Yours truly,
Marie Smith
Marie Smith

Enclosures

Note: If you are filing a Joint Petition, revise the wording accordingly to state that you have enclosed a Joint Petition for Divorce.

2.2 Photocopy your Documents

Make one photocopy of your:

- Divorce petition
- Marriage certificate
- Separation agreement, if you have one
- Financial Statement and income information, if you have them.

Make sure you have **one original and one photocopy of each document.** Two originals will not be accepted. It is a good idea to make an extra copy of every document for your own records.

Check your copies carefully. Make sure that every copy contains all the pages that are in the original. You must have the original marriage certificate. Check that copies are legible. Make sure none of the text is missing on any of the copies. You need two complete identical sets.

2.3 Get Cheques or Money Orders for all Required Fees

When you file your petition, you must attach the following two separate fees:

- **$100 Fee for Filing the Petition.**

For the filing fee, you need a *certified cheque* from a bank or a *money order* from the post office. The bank or post office may add a service charge to the $100.00. Make the certified cheque or money order payable to the **MINISTER OF FINANCE.** If you file in person, you can pay in cash, credit card, debit or money order.

- **$10 Fee to get a Clearance Certificate from the Central Registry of Divorce Proceedings in Ottawa.**

You can pay the $10 with a regular cheque. Make it out to the **RECEIVER GENERAL OF CANADA.** The Central Registry will issue a Clearance Certificate to you. It may take several weeks before you receive the Clearance Certificate. Please note, the Clearance Certificate is NOT your divorce. For more information about the clearance certificate, see below. (Appendix 7, pg 77)

Note – Fees sometimes waived: The Registrar will waive the fee for filing the petition and the fee to get the clearance certificate for persons who provide **written proof** from their case worker that they **receive income assistance.**

2.4 Put Together All the Required Documents and Fees

Gather together your petition and all the documents.

- All the original documents (original marriage certificate, separation agreement and financial statement and income information.)
- One set of photocopies of all the original documents
- A cover letter and legal-size self-addressed envelope (8 $^{1}/_{2}$" x 14")
- Certified cheque or money order for $100 for the filing fee
- Cheque or money order for $10 for the clearance certificate.

2.5 File the Documents

You are now ready to file your petition. Take your package personally to the Registrar's Office, Room 202, Justice Building, 427 Queen Street in Fredericton.

Or mail it to:

Deputy Registrar of the Court of Queen's Bench
Justice Building, Room 202
P.O. Box 6000
Fredericton NB E3B 5H1
Telephone: (506) 453-2452

Note: If you have read ahead in the guide, please be aware that filing your petition is not the same as filing your Trial Record, which only comes later in the process.

Changing Your Mind: If you change your mind after filing the petition, decide to stop the proceedings, or need to correct a mistake on a document see **Appendix 6, page 75** for how and when you can do this.

Wait for the Registrar's Office to Return the Original Petition and Documents

After filing your petition, you must wait for the Registrar's Office to send you:

- **Your original divorce petition** and attachments, which will now have a court seal and a court file number (you must have this to serve your spouse)
- **Clearance Certificate** (which will take about 6 to 8 weeks. You do not need to have this to serve your spouse, but you MUST have this to file your Trial Record)

Original Divorce Petition and Attachments

When you file your petition, the Deputy Registrar will sign, stamp and write a **court file number** on the original Petition for Divorce. The **court file number** is very important. That is how the court identifies cases. All the documents you must later prepare in your divorce proceeding **must** have this file number on them - only the name of the document changes. Before you can move on to the next step of arranging service on your spouse, you must wait for the Registrar's Office to return the original set of documents to you. They will keep the set of photocopies.

After the Registrar's Office returns the original divorce petition to you, you must make a copy to be served on your spouse. You **MUST** serve the documents on your spouse **within 6 months of the filing date.**

Clearance Certificate

The Deputy Registrar will send your **Clearance Certificate** to you when it arrives. It usually takes from about 6 weeks to 3 months. You do not have to wait to get your Clearance Certificate before serving your spouse – Step 3. However, you will need to have the **Clearance Certificate** in order to prepare your **Trial Record** (See Step 4). If you are doing a Joint Petition, you are both petitioners and you do not have to serve the petition. You can skip to preparation of your Trial Record (Step 4). But you must wait for the Clearance Certificate before you can submit your Trial Record. See **Appendix 7** for What is a Clearance Certificate.

You may check on the status of your request for a clearance certificate, by writing to:

Family Law Assistance Services
Central Registry of Divorce Proceedings
284 Wellington Street
Ottawa, Ontario K1A 0H8
Telephone: 613-957-4519

Once you get your **Clearance Certificate** and the Registrar has returned your original **Petition** with a court file number, be sure to **keep them in a safe place.**

Step 3: Arrange for Service of the Divorce Petition and Attachments on Your Spouse

This section of the guide explains:

3.1 Arranging for Service of the Divorce Petition and Attachments

3.2. Methods of Service

3.3 Requirements for Proof of Service by Personal Service and Registered Mail or Courier

3.4 Service Outside of New Brunswick

3.5 Affidavit of Service by Personal Service

3.6 Affidavit of Service by Registered Mail or Courier

3.1 Arranging for Service

Once you receive your original set of documents with attachments back from the Registrar, you are ready to serve them on your spouse. Remember, you must have the petition served within six months of the date that the Deputy Registrar's office received the petition. If you wait more than six months, you will need to ask the court for an extension of time to serve the documents. Requesting an extension is explained at the end of this step.

When you are ready for Step 3, the first thing you should do is **make two more copies** of the original documents. One set of copies is to serve on your spouse. The other set is for your records. If you are doing a Joint Petition, you can skip this step. You are both petitioners and there is no need for service.

What You Should Know About Serving Documents

There are several ways to serve documents. You can choose the one that suits you best. Whichever method you choose, you must have **"Proof of Service"**. The court requires proof that your spouse has received a copy of the Petition for Divorce and has had a chance to answer. So you must choose a method that allows you to prove you had the documents served on him/her.

What does it mean to "serve" documents?

When a person delivers the documents to your spouse, and your spouse accepts them, it is called *serving* the documents. You must inform your spouse that you are applying for a divorce. Your spouse must receive copies of the documents. **You cannot bring or mail the documents to your spouse. Another adult must serve the documents on your spouse.**

3.2 Methods of Service

Choose one of the following methods to serve your documents on your spouse:

A. Personal Service

Personal service is one of the best methods for service. It involves someone (the server) hand-delivering the documents to your spouse. **You cannot do this yourself.** If you use this method, you will have to prepare an **Affidavit of Service (Form 18B)** and give it to your server (see example E.3 on page 23). To personally serve documents you can:

- Hire a **private company** to do this for you. They are professionals and will have experience serving documents and providing proof of service.
- Ask a **friend or relative** at least 19 years old to serve the documents. If you ask a friend or relative to do it, that person is the server. You must **prepare your documents for the server as described below.**

What is an Affidavit of Service?

The Affidavit of Service is a written statement made under oath (signed in front of a Commissioner of Oaths) that details that the server served the respondent with the attached documents on a specific date and at a specific location.

B. Service by Registered Mail or Courier

You may also get someone (the server) to serve the documents by using the registered mail service of the post office or a courier service. You will need to have an **Affidavit of Service** with this method too. (See example E.4 on page 24)

C. Substituted Service

If you need to use this type of service, you will need a lawyer.

If you cannot find your spouse, then it is impossible to serve the documents by the methods above. Under these circumstances, you must ask the court for an order for substituted service. If the court agrees that personal service is not possible, it may make an order for service of the documents in a different way, such as by newspaper ad, on a relative of your spouse or the court could make an order dispensing with service.

*Note: You **cannot** fax the documents to your spouse. However, if your spouse has a lawyer who will accept service, the documents can be faxed to the lawyer by an adult other than yourself.*

Getting an Extension of Time for Service

You only have 6 MONTHS after filing the documents to have them served them on your spouse (the Respondent). If you have not served the documents within six months of the date that you filed the petition, you will need to request an extension of time. If you think you will need an extension, be sure to start the process before the six months is up. To do this, you will need a lawyer to bring a motion before the court.

3.3 Requirements for Proof of Service by Personal Service and Registered Mail or Courier

	Personal Service	Registered Mail or Courier
Documents Petitioner must prepare to give the server	1) The original Petition for Divorce, marriage certificate, separation agreement and any other documents that you filed. This is the same set of original documents that the court sent back to you with a court file number on it after you filed the photocopied set. Write "A" on the top of your original Petition. 2) A copy of the Petition for Divorce and the other documents. This is the photocopied set of documents that you made after you received the original documents back from the Registrar's Office. This is the set that the server will leave with your spouse. 3) An Affidavit of Service (Form 18B) that you prepare if your server is a friend or relative. It will have blank spaces that the server will fill out. (See Example E.3 - on page 23 Personal Service.) However, you can place the proper names and judicial district, etc, in the gray areas.	1) Original Petition for Divorce and attachments 2) A copy of the Petition for Divorce and other documents. This is the photocopied set of documents that you made from the original documents after the Registrar's Office returned them to you. **This is the set of documents that the server will send to your spouse.** 3) An Affidavit of Service (Form 18B). See Example E.4 on page 24 -Service by Registered Mail. 4) An Acknowledgement of Receipt Card (Form 18A) for your spouse to mail back to the server as proof of service. See example E.5 on page 25. 5) A self-addressed stamped envelope for your spouse to use to mail back the Acknowledgement of Receipt Card to the server (optional).
Petitioner's responsibility	Tell the server where to find your spouse. Give the server your spouse's home or work address.	Ask the server to send these documents by registered mail or courier to your spouse. Write "Personal and Confidential" on the envelope so that no one other than your spouse will sign for it.
Server's responsibility when serving	Make sure the person really is your spouse. If your server does not know your spouse well enough to be certain, the server should ask your spouse whether he or she is _____ (name) and ask for a piece of identification, such as a Social Insurance Number or driver's license. Write down the type of identification and its number on the **Affidavit of Service (See Example E.3 on page 23 – Personal Service).** Keep the original document and leave the copies of the Petition for Divorce and the other documents with your spouse (now the Respondent).	When the server uses the Registered Mail service at Canada Post, they must ask for confirmation that Canada Post received the item for mailing and that the item arrived at its destination. The server can find the name of the person who signed for the package and the date of delivery by calling 1-888-550-6333, though some restrictions may apply. Canada Post can fax the signature to the server or let the server view the signature online at: **https://obc.canadapost.ca/emo/basicPin.do?language=en.**

	Personal Service	Registered Mail or Courier
Server's responsibility after service	Fill in the blanks on the **Affidavit of Service** and staple the **Affidavit** to the original Petition and attached documents. Take the **Affidavit** to a Commissioner of Oaths and swear or affirm to it and sign it in front of him or her. The Commissioner of Oaths will sign after watching the server sign it. The Commissioner of Oaths must also sign and date the attached original Petition marked "A". Return the original documents and the Affidavit of Service to you. The Affidavit of Service shows that your spouse was served. Do not detach the Affidavit.	When the server receives the **Acknowledgement of Receipt Card** or the **post office receipt**, he or she must: **Write** "B" on the top. Fill in the blanks on the **Affidavit of Service** Bring the **Affidavit of Service** and the **Acknowledgement of Receipt Card** or **post office receipt** to a Commissioner of Oaths and swear/affirm to it and sign it in front of the commissioner. The Commissioner must also sign and date the Affidavit of Service as well as the attached Petition marked "A" and the attached Acknowledgement of Receipt Card marked "B". Give the **original documents** and the **Affidavit of Service** back to you. [Note: the Acknowledgement of Receipt Card or post office receipt are not sufficient proof without the Affidavit of Service]
If spouse is not home /Won't accept service	If your spouse is not at his/her place of residence, the server can leave a copy in a sealed envelope, addressed to your spouse, with any adult who appears to be living there. The server must then send another copy of the document, addressed to your spouse at his/her place of residence, by prepaid mail on the same day or the next day. If your spouse is trying to avoid the server, contact a lawyer.	If your spouse does not send the **Acknowledgement of Receipt Card** back to you, Canada Post should be able to supply the server with the information needed to show that your spouse did accept service. It is also possible to get a hard copy of the signature from Canada Post, if it becomes necessary, for a fee.
Pros and Cons	**You can hire a friend or use a professional Server:** You can look up private companies that serve documents by checking in the yellow pages of the telephone book under "Process Servers" or check out the web site www.CanadianProcessServing.com	There is a small fee for registered mail and an extra fee if you need the hard copy of the respondent's signature. With courier services, you need to use the **Acknowledgement of Receipt Card**. Some of these services have signature release agreements where the courier can leave the package without getting a signature.

3.4 Service Outside New Brunswick

If your spouse is outside New Brunswick you can have the Petition and other documents served on your spouse outside New Brunswick. Many process servers are experienced serving documents outside New Brunswick. You do not need permission of the court to serve documents outside the province. Proof of service can be obtained the same way as in New Brunswick, by an Affidavit of Service from the person who served the documents, or by an Acknowledgement of Receipt Card that your spouse signed and returned to the server. If your server used registered mail, proof of service would be a copy of the signature from Canada Post.

If your spouse is outside New Brunswick and did not want to accept service, he or she has the option of making a Motion before the court to set aside the service. He or she must do this in the time period allowed to Answer the petition, which would be 30 days if he/she is elsewhere in Canada or the United States, or 60 days if he/she is anywhere else in the world. If this happens, contact a lawyer.

3.5 Affidavit of Service by Personal Service

Example E.3. Affidavit of Service by Personal Service

Court File Number **1301-0000**

IN THE COURT OF QUEEN'S BENCH OF NEW BRUNSWICK
FAMILY DIVISION
JUDICIAL DISTRICT OF MONCTON

BETWEEN:

Marie Smith
PETITIONER
-and-
Robert Smith
RESPONDENT

AFFIDAVIT OF SERVICE[1] (FORM 18B)

I, **Jane Jones**, of the city of **Moncton**, in the County of **Westmorland**, in the Province of New Brunswick, **teacher**, MAKE OATH AND SAY AS FOLLOWS:

1. On the _____ day of _____, 20____, I served the respondent with a copy of the attached Petition for Divorce (Form 72A), and attached documents marked "A", by leaving a copy with **him** at **57 Lilac Street, Moncton**, New Brunswick.[2]

2. I was able to identify the person served by means of the fact that **[I know him/her personally or the respondent admitted to being Robert Smith, spouse of Marie Smith. The respondent showed me his New Brunswick Driver's license in the name of Robert Smith, number 777777, bearing the respondent's signature, which is the same as the signature on the back of the original Petition for Divorce.]**[3]

SWORN TO BEFORE ME at
_____, in the County of **Westmorland**,
in the Province of New Brunswick,
this _____ day of _____, 20_____.

_____ *Jane Jones*

A Commissioner of Oaths[4] Jane Jones

Being a solicitor
or
My appointment expires
(Month... Day...Year)

[1] *If you filed a Joint Petition, do not create this form.*
[2] *Attach a copy of the petition and the documents. Mark the copy of the petition "A". The Commissioner of Oaths should initial beside the "A".*
[3] *The server must fill in the method of identification that he or she used.*
[4] *Print the name of the Commissioner of Oaths under the line.*

Example E.4. Affidavit of Service by Registered Mail

Court File Number 1301-0000

IN THE COURT OF QUEEN'S BENCH OF NEW BRUNSWICK
FAMILY DIVISION
JUDICIAL DISTRICT OF MONCTON

BETWEEN:

Marie Smith
PETITIONER
-and-
Robert Smith
RESPONDENT

AFFIDAVIT OF SERVICE[5] (FORM 18B)

I, **Jane Jones**, of the city of **Moncton**, in the County of **Westmorland**, in the Province of New Brunswick, **teacher**, MAKE OATH AND SAY AS FOLLOWS:

1. On the ___ day of _____, 20____, I served the respondent with a copy of the attached Petition for Divorce (Form 72A), and attached documents marked "A", by sending a copy of the document **[together with the Acknowledgement of Receipt Card]**[6] by registered mail addressed to the respondent at **57 Lilac Street, Moncton,** New Brunswick, **his** last known address.

2. On the ___ day of _____, 20____, **[the attached Acknowledgement of Receipt Card** *or* **post office receipt]** marked "B" bearing a signature which appears to be the signature of the respondent was returned to and received by me.[7]

SWORN TO BEFORE ME at
_____, in the County of **Westmorland,**
in the Province of New Brunswick,
this _____ day of _____, 20_____.

_____

A Commissioner of Oaths[8]

Being a solicitor
or
My appointment expires
(Month... Day...Year)

Jane Jones

Jane Jones

[5] *If you filed a Joint Petition, do not create this form.*
[6] *If you use an Acknowledgement of Receipt Card, you must add what is written in brackets.*
[7] *Attach a copy of the Petition for Divorce and mark it "A". Also attach the respondent's Acknowledgement of Receipt Card or post office receipt and mark it "B". The Commissioner of Oaths will initial beside the "A" and "B" on the attached documents.*
[8] *Print the name of the Commissioner of Oaths under the line.*

Example E.5. Acknowledgement of Receipt Card

Court File Number **1301-0000**

IN THE COURT OF QUEEN'S BENCH OF NEW BRUNSWICK
FAMILY DIVISION
JUDICIAL DISTRICT OF MONCTON

BETWEEN:

Marie Smith
PETITIONER
-and-
Robert Smith
RESPONDENT

ACKNOWLEDGEMENT OF RECEIPT CARD (FORM 18A)

TO: Robert Smith

You are served by mail with the documents enclosed with this card pursuant to the Rules of Court.

You **MUST** complete and sign the acknowledgement below and mail this card within 3 days of the date you receive it or you may have to pay the costs to the Sheriff or some other person serving you personally.

Acknowledgement of Receipt[9]

I hereby acknowledge that on the ____ day of _____, 20_____, I received the following documents:

a) copy of the Petition for Divorce together with attached documents.

b) Financial Statement (if applicable).

_____

Robert Smith

[9] *Write your full address on the reverse side of the Acknowledgement of Receipt Card before mailing it. Include it in the envelope with the Petition.*

Wait for the Respondent (your spouse) to Reply

After service you can start preparing some of the documents you will need for your Trial Record. However, before you can file your Trial Record you must wait for two things:

- **Clearance Certificate:** You can start to prepare your Trial Record without your clearance certificate, but everyone must wait for the clearance certificate before filing the Trial Record.
- **The Answer if any:** You must wait the required length of time for your spouse (the *respondent)* to serve on you and file an Answer to the petition. If you and your spouse filed a Joint Petition, there was no service as there is no Respondent.

How long you must wait for an answer depends...

The amount of time you must wait after service depends on where the documents were served on your spouse – see the table below.

Location Where Your Spouse Served	Length of time for Spouse to Answer
New Brunswick	within 20 days after service
Canada or the United States	within 30 days after service
Anywhere else in the world	within 60 days after service

What happens next depends on whether or not your spouse Answered the petition.

If Your Spouse Answers the Petition...Get Legal Advice.	If Your Spouse Does NOT Answer the Petition...Go Ahead.
An Answer is a defence in a divorce proceeding. It means your spouse disagrees with something in the divorce petition. *If your spouse serves you with an Answer, you should see a lawyer.* You should also contact a lawyer right away if you are served with an Answer and Counter-Petition (Form 72F).*	If your spouse does not file an answer within the time given, it means that he or she is not opposing the divorce. You can go to the next step. You can also go to the next step and do your own divorce if your spouse serves a Financial Statement or income information without serving an Answer.

* **Note:** Your spouse can instead serve you with a **Notice of Intent to Defend** (Form 20A) within the allowable time period. This notice allows for an additional **10 days** over the time limit to file and serve the Answer. You should get legal advice.

After you wait the appropriate length of time and your spouse has not served you with an Answer, it means that your spouse does not oppose the divorce. You can now file your Trial Record. Remember, even if your spouse does not oppose the divorce, if you asked for child support your spouse must serve you with a **Financial Statement and the Income Information** required under the **Child Support Guidelines.** If you asked for spousal support, your spouse must serve you with a **Financial Statement.**

Step 4: Prepare the Trial Record

This section of the guide explains how to prepare all the documents you need to include in your Trial Record when you proceed by Affidavit Evidence.

4.1 Cover Letter (See Example E.6 on page 28)

4.2 Cover Page (Called the "Trial Record". See Example E.7 on page 29 - Assessment of Request for Divorce.)

4.3 Index, which is like a table of contents. It lists all the documents in the trial record. Number the documents and show the numbers in the index. (See Example E.8 on page 30.)

4.4 Certificate of Readiness (Form 47B). When you prepare this form, make any necessary changes so the certificate is accurate for your situation. (See Example E.9 on page 31 for affidavit evidence.)

4.5 Request for Divorce (Form 72K). You must complete this form if you want to use affidavit evidence instead of a court hearing. (See Example E.10 on page 32.)

4.6 Clearance Certificate (the certified copy you received from the Registrar.)

4.7 Affidavit of Service (and the Acknowledgement of Receipt Card if service was by mail or courier) NOTE: You must have proof of Service. Attach the proof of service to the front of the original Petition for Divorce.

4.8 Original Petition for Divorce and its attached documents fastened to it (marriage certificate, and, if applicable, financial statements and other income information and a separation agreement or family court orders if you have them.) An Amended Petition would go here as well.

4.9 Affidavit of Evidence of the Petitioner, which could have other documents attached to it. Please note: Your Affidavit of Evidence must be sworn (signed) in front of a Commissioner of Oaths not more than 5 days before you file the Trial Record. For a Joint Petition of Divorce, you must BOTH swear to your affidavit(s) not more than 14 days before filing the Trial Record.

NOTE: Most of the documents that you must prepare for your Trial Record are **NOT pre-printed** forms. Your affidavit is simply a signed written statement of facts that you swear or affirm is true. In order to prepare your Trial Record, you will have to create the required documents. Most are very short. Following are examples of every form and document that you will need to create to proceed by affidavit evidence. You must substitute your own relevant information in the blue areas in the samples. You should review these forms very closely to be sure you prepare all your documents correctly. **(For information on filing a Trial Record for a Court Hearing, see Appendix 2 at the end of the guide.)**

4.1 Cover Letter for the Trial Record

The **Trial Record** is a package that contains all of the relevant documents that you need to file with the court. These documents show the court that you have followed all the steps required in a divorce process. You will have to decide if you are proceeding by Affidavit Evidence or by Court Hearing.

Example E.6. Cover Letter for the Trial Record

2 Poplar Street
Moncton, NB
E1C 1A1
_____, 20__

Court Administrator
The Court of Queen's Bench
Family Division
Judicial District of Moncton

Re: Marie Smith and Robert Smith

Court File Number 1301-0000

Please find enclosed the Trial Record in the above-mentioned case, sent to you for the purpose of **assessment of the Request for Divorce.**[10]

Yours truly,

Marie Smith

Marie Smith

Enclosures

[10] *If you are proceeding by court hearing, replace bold text by: setting down for trial.*

4.2 Cover Page for the Trial Record

Example E.7. Cover Page for the Trial Record

Court File Number **1301-0000**

IN THE COURT OF QUEEN'S BENCH OF NEW BRUNSWICK
FAMILY DIVISION
JUDICIAL DISTRICT OF MONCTON

BETWEEN:[11]

Marie Smith
PETITIONER
-and-
Robert Smith
RESPONDENT

TRIAL RECORD

Marie Smith, Petitioner
2 Poplar Street
Moncton, NB
E1C 1A1
Telephone: 888-0000

Robert Smith, Respondent
57 Lilac Street
Moncton, NB
E1C 3B3
Telephone: 888-5555

[11] *If you filed a Joint Petition for Divorce, both parties are petitioners. Wherever "Respondent" is used in an example, change it to "Joint Petitioner".*

4.3 Index for the Trial Record

Example E.8. Index for the Trial Record

Court File Number 1301-0000

IN THE COURT OF QUEEN'S BENCH OF NEW BRUNSWICK
FAMILY DIVISION
JUDICIAL DISTRICT OF MONCTON

BETWEEN:[12]

Marie Smith
PETITIONER
-and-
Robert Smith
RESPONDENT

INDEX

(for affidavit evidence)

1. Certificate of Readiness[13]
2. Request for Divorce
3. Clearance Certificate from the Central Registry of Divorce Proceedings
4. Affidavit of Service (if served by mail or courier, the Acknowledge of Receipt Card must also be attached)
5. Original Petition for Divorce of Marie Smith
6. Affidavit(s) of Evidence of the Petitioner(s)

See Example E.16 in Appendix 2 for an Index for Trial Record by Court Hearing

[12] *If you filed a Joint Petition for Divorce, both parties are petitioners. Wherever "Respondent" is used in an example, change it to "Joint Petitioner". Also, delete the Affidavit of Service.*
[13] *See Example 9.*

4.4 Certificate of Readiness (affidavit evidence)

Example E.9. Certificate of Readiness

Court File Number **1301-0000**

IN THE COURT OF QUEEN'S BENCH OF NEW BRUNSWICK
FAMILY DIVISION
JUDICIAL DISTRICT OF MONCTON

BETWEEN:[14]

Marie Smith
PETITIONER
-and-
Robert Smith
RESPONDENT

CERTIFICATE OF READINESS (for affidavit evidence) (FORM 47B)

I, **Marie Smith**, petitioner, certify that the pleadings are closed and that I am now ready to proceed to trial.[15]

Having consulted with the respondent, I inform the court that:

a) we agree that all pre-trial procedures have been completed;

b) if leave is given to proceed by way of affidavit evidence, no court time is required.

DATED in **Moncton**, New Brunswick, this _____ day of _____, 20_____.

Marie Smith

Marie Smith, Petitioner

See Example E.17 in Appendix 2 for Certificate of Readiness for a Court Hearing

[14] *If you filed a Joint Petition for Divorce, both parties are petitioners. Wherever "Respondent" is used in an example, change it to "Joint Petitioner".*
If you filed a Joint Petition for Divorce, state:
[15] *"We, _____ and _____, petitioners, certify that the pleadings are closed and that we are now ready to proceed to trial. We inform the court that: ..."*

4.5 Request for Divorce

Example E.10. Request for Divorce

Court File Number **1301-0000**

IN THE COURT OF QUEEN'S BENCH OF NEW BRUNSWICK
FAMILY DIVISION
JUDICIAL DISTRICT OF MONCTON

BETWEEN:[16]

Marie Smith
PETITIONER
-and-
Robert Smith
RESPONDENT

REQUEST FOR DIVORCE (FORM 72K)

TO THE ADMINISTRATOR OF THE COURT:

1. I request that this proceeding be considered under rule 72.18 on the basis of affidavit evidence.

2. Service of the Petition for Divorce on the respondent was effected by **Jane Jones, teacher**, on the _____ day of _____, 20____.

3. The respondent has not filed an answer.[17]

4. The respondent's[18] address is **57 Lilac Street, Moncton,** New Brunswick, E1C 3B3.

5. The affidavit evidence to be considered with my Petition for Divorce[19] is attached.

6. The petitioner's address is **2 Poplar Street, Moncton, New Brunswick, E1C 1A1.**

DATED at **Moncton**, New Brunswick, this _____ day of _____, 20____.

Marie Smith

Marie Smith, Petitioner

[16] If you filed a Joint Petition for Divorce, both parties are petitioners. Wherever "Respondent" is used in an example, change it to "Joint Petitioner".
[17] If you filed a Joint Petition for Divorce, delete #'s 2 and 3.
[18] If you filed a Joint Petition for Divorce, change the word "Respondent's" to "Joint Petitioner's".
[19] If you filed a Joint Petition for Divorce, state that "our Joint Petition for Divorce" is attached.

4.6 Clearance Certificate

The Clearance Certificate must be in the Trial Record. The Central Registry of Divorce Proceedings in Ottawa will send your divorce Clearance Certificate to the Registrar's office. The Registrar's office will then forward it to you.

Your divorce Clearance Certificate becomes part of the Trial Record. Remember, this is not your divorce judgment. See Appendix 7 for "What is a Clearance Certificate".

You can begin preparing the Record while you are waiting for your Certificate but do not file the Trial Record without the Clearance Certificate. If you do, the court will return the Record to you because it is incomplete.

4.7 Affidavit of Service (Proof of Service)

Proof of Service means the Affidavit of Service (See pages 23 and 24 for examples) and in some cases, the Acknowledgement of Receipt Card (See page 25). These should be stapled to the front of the original Petition for Divorce.

4.8 Original Petition for Divorce

You must file your original Petition for Divorce and all attached documentation (marriage certificate, and, if applicable, financial statements and other income information and a separation agreement or family court orders if you have them.). See examples on pages 43 and 56. An Amended Petition would go here as well.

4.9 Affidavit of Evidence - Supporting Petition by One Spouse

Individuals who are using **this guide** for an uncontested divorce, **usually proceed by affidavit evidence**. When you proceed by Affidavit Evidence you use a sworn written statement of fact *(affidavit)* (see example E.11 on page 34). (For an example of an Affidavit of Evidence Supporting a Joint Petition see Example E.15 on page 65 in Appendix 1 at the back of this guide.)

The affidavit provides the evidence to the judge. You do not normally have to go to court. However, even with affidavit evidence, the judge may sometimes require a court hearing, especially if the evidence is unclear and the information is incomplete. For more information on the requirements for an affidavit of evidence, read the additional information provided in Appendix 7.

Finally, don't forget, you must take your Affidavit of Evidence to a Commissioner of Oaths and *swear that it is true* (sign it) in front of a Commissioner *not more than 5 days before you file the Trial Record*. The Commissioner must all sign and date it. For a Joint Petition of Divorce, you must BOTH swear to your affidavit(s) **not more than 14 days before filing the Trial Record.**

Wait for your clearance certificate – everyone must wait for this.

If you have not received your Clearance Certificate, by the time you are ready for this step, be patient as it can take **2 to 3 months** from the day that you paid the Registrar until delivery.

When you have all the necessary documents and sworn to your affidavit, you are now ready for Step 5 – file your Trial Record.

Example E.11. Affidavit of Evidence – Petition by One Spouse

Court File Number 1301-0000

IN THE COURT OF QUEEN'S BENCH OF NEW BRUNSWICK
FAMILY DIVISION
JUDICIAL DISTRICT OF MONCTON

BETWEEN:

Marie Smith
PETITIONER
-and-
Robert Smith
RESPONDENT

AFFIDAVIT

I, **Marie Smith**, of the city of **Moncton** in the County of **Westmorland** and Province of New Brunswick, **waitress**, MAKE OATH AND SAY AS FOLLOWS:

1. I am the petitioner named in the Petition for Divorce dated the ___ day of _____, 20___.

2. I have been ordinarily resident in New Brunswick for at least one year immediately before the date on which the Petition of Divorce was filed.

3. The Respondent **Robert Smith** is an **electrician** and resides at **57 Lilac Street** in the city of Moncton in the County of **Westmorland** and Province of New Brunswick. This address is known to me **because I contacted the Respondent at this address to discuss matters relating to the children.**

4. There is no possibility of reconciliation of the spouses. **The Respondent and I made an attempt at reconciliation by attending marriage-counselling sessions with _____ of _____ in _____, 20___. The attempt at reconciliation was not successful.**

5. I confirm that all the information in the Petition for Divorce is correct.

6. A certificate of marriage is attached to the Petition for Divorce.

7. The Respondent and I separated on the ___day of _____, 20__ and have remained separate and apart since that day. This separation has resulted in a permanent breakdown of the marriage. On the date of separation and continuously since then it has been the Respondent's and my intention to remain separate and apart.

8. I am not directly or indirectly a party to any agreement or conspiracy for the purpose of subverting the administration of justice, including any agreement, understanding or arrangement to make up or hide evidence or to deceive the court.

9. I do not claim spousal support.

10. There are two children of the marriage: Anne Smith, born on the ____ day of _____, ____, and Michel Smith, born on the ____day of _____, _____.

11. The Respondent and I made a separation agreement dated the _____ day of _____, 20___, a copy of which is attached to the Petition for Divorce as Exhibit "A". I ask the court to include in the Divorce Judgment the following provisions of the agreement:[20]

12. I claim child support in the amount of $_____ per month for the two children of the marriage under the child support guidelines based on the income of the respondent as set out in the Respondent's Financial Statement and income information. I have no knowledge of any change in circumstances since the Financial Statement and information were filed.

13. I do not wish to claim a division of property at this time. I am aware that no application for a division of property under the Marital Property Act can be made more than 60 days after the divorce takes effect except in the circumstances in subsection 3(4) if the *Marital Property Act*.

14. I do not claim costs.

SWORN before me at
_____,
in the County of Westmorland,
in the Province of New Brunswick, this
_____ day of _____, 20____.

Marie Smith

_____

A Commissioner of Oaths[21]
Being a solicitor
or
My appointment expires
(Month.... Day.... Year)

Marie Smith

See Example E.15 on page 65 in Appendix 1 for an Affidavit Supporting a Joint Petition

[20] *Attach the agreement and mark it "A". Give the number of the sections that you want to include in the divorce judgment and copy out the exact words from the agreement.*

[21] *Print the name of the Commissioner of Oaths under the line.*

Step 5: File the Trial Record

This section of the guide explains:

5.1 Where to send your Trial Record

5.2 What happens after you file

5.1 Where to Send the Trial Record

Mail or deliver your Trial Record in person to the **clerk/administrator of the Court of Queen's Bench, Family Division in your judicial district.** (The addresses are in Appendix 5.)

Do NOT send the Trial Record to the Registrar's Office.

Please Note: Make sure your Trial Record is accurate and complete before you file it. If the information in the Trial Record is incomplete or inaccurate, then the judge will return the Trial Record to you. Once you have made the Trial Record complete and accurate you must re-file it with the court. There is a $10 re-filing fee. In some cases, the judge may want to talk to you.

Be sure to make and keep a copy of all your documents for your own records.

Remember: This guide only explains doing a divorce based on a one-year separation. You can start the process before the one-year period has ended, however you cannot file the **Trial Record** until the year has finished.

5.2 What happens after you file

After you have filed the Trial record, if you are proceeding by Affidavit Evidence, the clerk/administrator will submit it to the judge. There is no court hearing when you choose to proceed by affidavit evidence.

The judge reviews the Trial Record and the petitioner's Affidavit to make sure that your information and claims meet the requirements of the *Divorce Act* and the *Child Support Guidelines*. This is called an *Assessment of the Request for Divorce*.

- If all the documents are included, and
- If the information is accurate and complete to support the request for divorce and any related orders about custody, access and support arrangements (called *corollary relief orders*)...

Then, the judge will give a **Divorce Judgment** granting the divorce. The judge will write it in the Trial Record. **You should go to Step 6.**

If you opted for a Court Hearing

About two to four weeks after the office of the clerk/administrator receives the documents in your Trial Record, you will receive a **Notice of Hearing** date. The notice will tell you the date, time, courtroom and the location for the hearing.

If you need to change the court date, call the office of the clerk/administrator in your jurisdiction to see if they can change the date. Be sure to give them as much notice as possible.

See Appendix 8. **This step is only for those individuals who must attend a Court Hearing.** After you receive the Notice telling you the date of your court hearing, you must prepare for the hearing. This section will tell you about the hearing and how to prepare.

Step 6: Get Your Divorce Judgment

This section of the guide explains:

6.1 The Divorce Judgment

6.2 The Appeal Period

6.3 Agreement Not to Appeal (Form 72L)

6.1 The Divorce Judgment

After your hearing or the assessment of request, the judge will make a **Judgment granting the divorce**. In either case, the judge will sign an order and the **Trial Record** will be sent to the Registrar of the Court of Queen's Bench in Fredericton. The Registrar will send both of you the **Divorce Judgment** and a copy of the order for corollary relief, if any, in the mail.

A **Divorce Judgment** is an initial ruling that approves your divorce. The **Divorce Judgment** is **NOT** proof of divorce. It serves as a notice of the date that your divorce will take effect.

You can call the Clerk/Administrator's Office to ask if the Divorce Judgment has been signed and sent to the Registrar. (See Appendix 5 for the court office number in your jurisdiction.) You may also call the Registrar's Office at 506-453-2452 to ask when you should receive a copy of the Judgment.

6.2 The Appeal Period

Many people do not realize that there is a **30-day appeal** period from the date of the Divorce Judgment. In other words, both you and your spouse have 30 days to appeal the judgment.

If neither you nor your spouse appeals during that 30-day period, then *on the thirty-first day, your divorce is in effect*. At this time, you can apply for your Certificate of Divorce. (See Step 7.) The Certificate of Divorce is your proof of divorce.

6.3 Agreement Not to Appeal (Form 72L)

Ordinarily, you must wait until the 31st day after the date of the Divorce Judgment for the appeal period to run out. If there are **special circumstances**, and if you and your ex-spouse agree, you can apply to the court for an earlier effective date. You must both sign an **Agreement Not to Appeal** (Form 72L), page 38.

NOTE: You must include an Agreement Not to Appeal in your Trial Record in order for the Court to consider it before the divorce is granted.

Wait for the 30 day appeal period to end.

Example E.12. Agreement Not to Appeal

Court File Number 1301-0000

IN THE COURT OF QUEEN'S BENCH OF NEW BRUNSWICK
FAMILY DIVISION
JUDICIAL DISTRICT OF MONCTON

BETWEEN:[22]

Marie Smith
PETITIONER
-and-
Robert Smith
RESPONDENT

AGREEMENT NOT TO APPEAL (FORM 72L)

We hereby agree and undertake that no appeal will be taken from the judgment granting a divorce in this proceeding.

DATED at ....., this ..... day of ..... 20.....

Marie Smith

Marie Smith

Robert Smith

Robert Smith

[22] *If you filed a Joint Petition for Divorce, both parties are petitioners. Wherever "Respondent" is used in an example, change it to "Joint Petitioner".*

Step 7: Ask for Your Certificate of Divorce

This final section of the divorce guide explains:

7.1 Proving you are divorced

7.2 Applying for a Certificate of Divorce

7.3 Letter to Request a Certificate of Divorce

7.1 Proving you are Divorced

Your divorce becomes effective on the 31st day after the date of the **Divorce Judgment**, unless one spouse appeals. Your Divorce Judgment is not proof of divorce. When someone asks you for *"proof of divorce"* you must show a **Certificate of Divorce** to prove that your marriage has ended.

To get a **Certificate of Divorce** you must apply for it. It will not be sent to you automatically. You can apply for the **Certificate of Divorce** 30 days after the date of the Divorce Judgment.

7.2 Applying for a Certificate of Divorce

You can apply to the **Office of the Registrar of the Court of Queen's Bench** in Fredericton for your Certificate of Divorce. Prepare a letter requesting the certificate and send it to the Registrar – See Example E.13 on page 40.

You will need to enclose a **certified cheque** or **money order** for $7, payable to the **MINISTER OF FINANCE**. Send your letter and fee to the:

Deputy Registrar
Court of Queen's Bench
Room 202, Justice Building
P.O. Box 6000
Fredericton NB E3B 5H1
(or deliver by hand to Justice Building,
427 Queen Street, Room 202)

If you prefer, you can apply for a **Certificate of Divorce** at a **Service New Brunswick Centre** in your area or access the **Request Form** on Service New Brunswick's website at https://www.pxw1.snb.ca/snb7001/e/1000/CSS-FOL-SNB-45-0001E.pdf.

7.3 Letter to Request a Certificate of Divorce

Example E.13. Letter to Request a Certificate of Divorce

2 Poplar Street
Moncton, NB E1C 1A1
_____, 20____

Deputy Registrar
Court of Queen's Bench
Room 202, Justice Building
P.O. Box 6000
Fredericton NB E3B 5H1
(or if hand-delivered – Justice Building, 427 Queen Street, Room 202)

Re: Marie Smith and Robert Smith

Court File Number **1301-0000**

Dear Sir or Madam:

You will find enclosed a certified cheque [or money order] in the amount of $7 to cover the fee for a Certificate of Divorce in the divorce proceedings of **Marie Smith** and **Robert Smith**, court file number **1301-0000.**

Please send the Certificate of Divorce to me at the above address.

Yours truly,

Marie Smith

Marie Smith

Enclosures

You have now completed your divorce.
Congratulations on your hard work!

Your comments on this guide or the divorcing process are welcome. PLEIS-NB is continually revising this guide. Please contact us:

PLEIS-NB
P.O. Box 6000, Fredericton NB E3B 5H1
Tel. (506) 453-5369
Fax: (506) 453-5369 or email: pleisnb@web.ca
www.legal-info-legale.nb.ca

Appendices

Appendix 1: Petitions and Affidavit

Appendix 2: Documents You Need to Prepare for the Trial Record (Court Hearing)

Appendix 3: Breakdown of the Marriage

Appendix 4: Getting a Copy of Your Marriage Certificate

Appendix 5: Judicial Districts in New Brunswick

Appendix 6: Changing Your Mind or Correcting an Error

Appendix 7: Preparing and Completing Forms and Documents

Appendix 8: Getting Ready for a Court Hearing

Appendix 9: Other Useful Family Law Publications

Appendix 1: Petitions and Affidavit

Below is a list of forms that were not included in the main part of this guide. Please remember that you must adjust the examples we provided for your particular information and circumstances. While there are some pre-printed forms, most of them must be created by you. The petitions were too long to include within the body of the guide and can be found in this section. As well, a sample joint affidavit is included in this section.

Example E.1.1: **Petition for Divorce (Form 72A)**

Example E.1.2: **Joint Petition for Divorce (Form 72B)**

Example E.15: **Affidavit – Supporting Joint Petition**

Example E.1.1: Petition for Divorce (Form 72A)

Court File Number / N° du dossier
1301-(1)

IN THE COURT OF QUEEN'S BENCH OF NEW BRUNSWICK (2)

FAMILY DIVISION

JUDICIAL DISTRICT OF Moncton (3)

BETWEEN:

Marie Smith (4) PETITIONER

-and-

Robert Smith (5) RESPONDENT

COUR DU BANC DE LA REINE DU NOUVEAU-BRUNSWICK

DIVISION DE LA FAMILLE

CIRCONSCRIPTION JUDICIAIRE DE _____

ENTRE :

_____ REQUÉRANT

- et -

_____ INTIMÉ

PETITION FOR DIVORCE
(FORM 72A)

(N.B. *In completing this form, use full width of page in space provided where possible, irrespective of official language used. If space is insufficient, use additional page.)*

TO: *(Insert names and addresses of respondent and person(s)-named.)*

Robert Smith
57 Lilac Street
Moncton, NB
E1C 3B3

A LEGAL PROCEEDING FOR A DIVORCE HAS BEEN COMMENCED AGAINST YOU BY THE PETITIONER. THE CLAIM MADE AGAINST YOU APPEARS IN THE FOLLOWING PAGES.

If you wish to defend this proceeding, you or a New Brunswick lawyer acting for you must prepare your Answer in Form 72D and serve it on the petitioner or the petitioner's lawyer and file it in this Court office,

(a) if you are served in New Brunswick, WITHIN 20 DAYS after service on you of this Petition for Divorce, or

(b) if you are served out of New Brunswick but elsewhere in Canada or in the United States of America, WITHIN 30 DAYS after such service on you, or

(c) if you are served anywhere else WITHIN 60 DAYS after such service on you.

If this Petition for Divorce contains a claim for support or support and division of property, you must within the same time, file your Financial Statement in the form prescribed by the Rules of Court, whether or not you wish to defend this proceeding.

REQUÊTE EN DIVORCE
(FORMULE 72A)

(N.B. : *En remplissant cette formule, veuillez employer la largeur totale de la page dans les espaces accordés, si possible, quelque soit la langue officielle utilisée. Au besoin, employez des feuilles supplémentaires.)*

DESTINATAIRES : *(Donner les noms et adresses de l'intimé et des tiers désignés.)*

UNE POURSUITE JUDICIAIRE EN DIVORCE A ÉTÉ ENGAGÉE CONTRE VOUS PAR LE REQUÉRANT. LA DEMANDE FAITE CONTRE VOUS EST ÉNONCÉE DANS LES PAGES SUIVANTES.

Si vous désirez contester cette poursuite, vous-même ou un avocat du Nouveau-Brunswick chargé de vous représenter devrez préparer votre réponse au moyen de la formule 72D, la signifier au requérant ou à son avocat et la déposer au greffe de la cour :

a) DANS LES 20 JOURS de la signification qui vous sera faite de la présente requête en divorce, si elle vous est faite au Nouveau-Brunswick, ou

b) DANS LES 30 JOURS de la signification, si elle vous est faite dans une autre région du Canada ou dans les États-Unis d'Amérique, ou

c) DANS LES 60 JOURS de la signification, si elle vous est faite ailleurs.

Si la présente requête en divorce contient une demande d'ordonnance alimentaire ou une demande d'ordonnance alimentaire et de répartition des biens, vous devez, dans les même délais, déposer un état financier en la forme prescrite par les règles de procédure, que vous désiriez contester ou non la poursuite.

If this Petition for Divorce contains a claim for child support, you must within the same time, file the income information required by the child support guidelines, whether or not you wish to defend this proceeding.

Si la présente requête en divorce contient une demande d'ordonnance alimentaire au profit d'un enfant, vous devez, dans les mêmes délais, déposer les renseignements sur le revenu requis en vertu des lignes directrices sur les ordonnances alimentaires au profit d'un enfant, que vous désiriez contester ou non la poursuite.

IF YOU FAIL TO SERVE AND FILE AN ANSWER, A DIVORCE MAY BE GRANTED IN YOUR ABSENCE, AND, WITHOUT FURTHER NOTICE TO YOU JUDGMENT MAY BE GRANTED AGAINST YOU ON ANY OTHER CLAIM IN THIS PETITION AND YOU MAY LOSE YOUR RIGHT TO SUPPORT OR DIVISION OF PROPERTY.

SI VOUS OMETTEZ DE SIGNIFIER ET DE DÉPOSER UNE RÉPONSE, UN DIVORCE PEUT ÊTRE ACCORDÉ EN VOTRE ABSENCE ET, SANS AUTRE PRÉAVIS, UN JUGEMENT CONCERNANT TOUT AUTRE DEMANDE CONTENUE DANS LA PRÉSENTE REQUÊTE POURRA ÊTRE RENDU CONTRE VOUS ET VOUS POURREZ PERDRE VOTRE DROIT À UNE ORDONNANCE ALIMENTAIRE OU À UNE RÉPARTITION DES BIENS.

If you fail to serve and file an Answer, a Financial Statement or the income information required by the child support guidelines, you may be deemed to have admitted any claim made against you, and JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE.

Si vous omettez de signifier et déposer une réponse, un état financier ou les renseignements sur le revenu requis en vertu des lignes directrices sur les ordonnances alimentaires au profit d'un enfant, vous pourrez être réputé avoir accepté toute demande formulée contre vous et JUGEMENT POURRA ÊTRE RENDU CONTRE VOUS EN VOTRE ABSENCE.

You are advised that:

Sachez que :

(a) you are entitled to issue documents and present evidence in the proceeding in English or French or both;

a) vous avez le droit dans la présente instance, d'émettre des documents et de présenter votre preuve en français, en anglais ou dans les deux langues;

(b) the petitioner intends to proceed in the English language;

b) le requérant a l'intention d'utiliser la langue _____;

(c) you must indicate in your Answer the language in which you intend to proceed; and

c) vous devrez indiquer dans votre réponse la langue que vous avez l'intention d'utiliser; et

(d) if you intend to proceed in or present evidence in the other official language, an interpreter may be required and you must so advise the court administrator at least 7 days before the trial.

d) si vous avez l'intention d'utiliser l'autre langue officielle ou de présenter votre preuve dans cette autre langue, les services d'un interprète pourront être requis et vous devrez en aviser le greffier au moins 7 jours avant le procès.

You may inquire from this Court office the approximate date of the trial of this proceeding and the date and details of any divorce judgment or order granted.

Vous pouvez obtenir du présent greffe la date approximative du procès, ainsi que la date et autres détails de tout jugement de divorce rendu ou ordonnance accordée.

Neither you nor your spouse is free to remarry as a result of this proceeding until a divorce judgment has become effective. Once a divorce judgment has become effective, you may obtain a certificate of divorce from this Court office.

Ni vous ni votre conjoint ne pouvez vous remarier suite à cette instance tant qu'un jugement de divorce n'aura pas pris effet. Dès que le jugement de divorce aura pris effet, vous pourrez obtenir un certificat de divorce du présent greffe.

THIS PETITION FOR DIVORCE is signed and sealed for the Court of Queen's Bench by the Deputy Registrar of the Court at Fredericton, on the _____ day of _____, _____.

LA PRÉSENTE REQUÊTE EN DIVORCE est signée et scellée au nom de la Cour du Banc de la Reine par le registraire adjoint de la Cour à Fredericton, ce _____ _____, _____.

Deputy Registrar of the Court of Queen's Bench
Justice Building, Queen Street,
PO Box 6000, Fredericton, N.B. E3B 5H1

Registraire adjoint de la Cour du Banc de la Reine
Palais de Justice, rue Queen,
Fredericton, N.-B. E3B 5H1

PETITION FOR DIVORCE

(Strike out portions that are not applicable.)

CLAIM (3)

1 The petitioner claims:

(a) a divorce;

(b) under the Divorce Act,

(i) an order for custody of the 2 under the age of majority, as provided in section ____ of the separation agreement, dated ____, 20__, accepted which is attached, and

(ii) an order for the support of the 2 children of the marriage under the age of majority, as provided for in section ____ of the separation agreement dated ____, 20__.

(iii) a copy of which is attached.

(c) under the Marital Property Act

(i)

(ii)

(iii)

(State precisely everything you want the Court to include in the divorce judgment. If you claim child support, set out the number of children under the age of majority, the number of children over the age of majority and the nature and amount of any special expenses claimed. If you claim spousal support, set out the amount claimed as spousal support. If you claim a division of property , set out the nature and amount of relief claimed. If you claim division of property that is not listed in an attached Financial Statement, attach a list of all property that you seek to have divided and set out your claim to each item of property. If you want to include provisions of a domestic contract, separation agreement, minutes of settlement, previous court order or any other documents in the divorce judgment, attach a copy of the document and refer to the specific provisions to be included. If relief is claimed under any other Act, refer to the Act in the claim.)

REQUÊTE EN DIVORCE

(Rayez la mention inutile.)

DEMANDE

1 Le requérant demande :

a) un divorce;

b) en application de la Loi sur le divorce

(i) conformément au mariage

(ii)

(iii)

c) en application de la Loi sur les biens matrimoniaux

(i)

(ii)

(iii)

(Énoncer de façon précise tout ce que vous désirez faire inclure dans le jugement de divorce. Si vous demandez une ordonnance alimentaire au profit d'un enfant, indiquez le nombre d'enfants mineurs, le nombre d'enfants majeurs ainsi que la nature et le montant de toutes dépenses spéciales sollicitées. Si vous demandez une ordonnance alimentaire au profit d'un époux, indiquez le montant réclamé à ce titre. Si vous demandez une répartition des biens, décrivez la nature et le montant de la mesure de redressement sollicitées. Si vous demandez la répartition de biens qui ne sont pas mentionnés dans l'état financier annexé, annexez une liste de tous les biens qui feront l'objet de la répartition et établissez une demande relativement à chacun de ces biens. Si vous désirez inclure, dans le jugement de divorce, les dispositions d'un contrat domestique, d'une entente de séparation , le compte rendu d'un réglement amiable, une ordonnance antérieure de la cour ou tout autre document, annexez une copie du document et faites renvoi aux dispositions particulières à être incluses. Si une demande est faite pour une mesure de redressement en vertu de toute autre loi, faites renvoi à la loi dans votre demande.)

GROUNDS

2 (a) There has been a breakdown of the marriage by reason that: *(Check appropriate box or boxes.)*

☑ (i) the spouses have lived separate and apart since the 29th day of January, 2006 and are now living separate and apart.

☐ (ii) the respondent, on or about the _____ day of _____, committed adultery with _____

☐ (iii) the respondent has, since celebration of the marriage, treated the petitioner with physical or mental cruelty of such a kind as to render intolerable the continued cohabitation of the spouses.

(b) The particulars of the grounds for the divorce are: *(Set forth fully but concisely all the material facts relied on but not the evidence by which they may be proved.)*

The spouses have lived separate and apart at all times since the separation on January 29th, 2006. Both spouses agreed to the separation.

MOTIFS

2 a) Il y a eu échec du mariage car : *(Cochez la ou les cases applicables.)*

☐ (i) les époux ont vécu séparément depuis le _____ et vivent séparément à l'heure actuelle.

☐ (ii) l'intimé a, le ou aux environs du _____ commis l'adultère avec _____

☐ (iii) l'intimé a, depuis la célébration du mariage, traité le requérant avec une cruauté physique ou mentale qui rend intolérable le maintien de la cohabitation.

b) Les détails des motifs du divorce sont les suivants : *(Énoncez de façon complète et concise les faits déterminants sur lesquels repose la demande mais non les moyens de preuve à l'appui.)*

RECONCILIATION (9)

3 (a) There is no possibility of reconciliation of the spouses.

(b) *(Where applicable)* The following efforts to reconcile have been made:

The spouses attended marriage counselling sessions with _____ of Family Services, Moncton, NB in February, 2006. The spouses did not resume cohabitation.

RÉCONCILIATION

3 a) Il n'y a aucune possibilité de réconciliation des époux.

b) *(s'il y a lieu)* Voici les tentatives de réconciliation qui ont été faites :

PARTICULARS OF MARRIAGE (10)

(Attach a marriage certificate or explain its absence)

ÉTAT CIVIL

(Annexez un certificat de mariage ou justifiez son absence.)

4 (a) The petitioner and respondent were married on the 12th day of May, 1996, at Moncton, NB (place of marriage)

(b) The petitioner's surname at birth was (11) Green

(c) The respondent's surname at birth was Smith

(d) The marital status of the petitioner and the respondent at the time of the marriage was:

petitioner Single

respondent Single

(e) The petitioner was born on the 3rd day of April, 1975

(f) The respondent was born on the 7th day of June, 1974

4 a) Le requérant et l'intimé se sont épousés le _____

à _____ (endroit)

b) Le requérant avait pour nom de famille à la naissance : _____

c) L'intimé avait pour nom de famille à la naissance : _____

d) Au moment du mariage, l'état matrimonial du requérant et de l'intimé était comme suit :

requérant _____

intimé _____

e) Le requérant est né le _____

f) L'intimé est né le _____

RESIDENCE AND JURISDICTION (12)

5 (a) The petitioner resides at Moncton in the Province of New Brunswick

(b) The respondent resides at Moncton in the Province of New Brunswick.

(c) (*Check the appropriate box*)

☐ The petitioner has been

☐ The respondent has been

☑ Both the petitioner and respondent have been ordinarily resident in the Province of New Brunswick for at least one year immediately preceding the date of the commencement of this proceeding

RÉSIDENCE ET RESSORT JUDICIAIRE

5 a) Le requérant réside à _____ dans la province de _____

b) L'intimé réside à _____ dans la province de _____.

c) (*Cochez la case applicable*)

☐ Le requérant a

☐ L'intimé a

☐ Le requérent et l'intimé ont résidé habituellement dans la province du Nouveau-Brunswick pendant au moins l'année précédant l'introduction de l'instance.

CAPACITY

6 Both the petitioner and the respondent are of the full age of 19 years and neither of them suffers from any legal disability.

CAPACITÉ

6 Le requérant et l'intimé ont chacun 19 ans révolus et ne sont pas atteints d'une incapacité juridique.

CHILDREN (13)

7 (a) The following are all the living children of the marriage as defined by the Divorce Act:

LES ENFANTS

7 a) Les enfants à charge au sens de la Loi sur le divorce sont les suivants :

Full Name Nom et prénoms	Birth date Date de naissance	School and grade or year École et année	Person(s) with whom child lives and length of time child has lived there Personne(s) avec laquelle (lesquelles) réside l'enfant et depuis combien de temps
Anne Smith	May 2, 2001	Victoria School (2nd grade)	Mother since January 29, 2006
Michel Smith	July 7, 2004	Happy Kindergarten	Mother since January 29, 2006

The children ordinarily reside in *(municipality and province, state or country)* Moncton, New Brunswick

Les enfants résident habituellement à *(municipalité et province, état ou pays)* _____

(b) The petitioner seeks an order for custody or joint custody of the following children on the following terms: *(Be sure that this claim agrees with the claim under clause 1(b).)*

b) Le requérant demande une ordonnance de garde ou de garde conjointe des enfants suivants, selon les modalités qui suivent: *(Assurez-vous que la présente demande est conforme à la demande présentée à l'alinéa 1b).)*

Name of Child Nom de l'enfant	Terms of the order Modalités de l'ordonnance
Anne Smith	A custody order as provided in section _____ of the separation agreement dated _____ _____, 20____, a copy of which is attached
Michel Smith	A custody order as provided in section _____ of the separation agreement dated _____ _____, 20____, a copy of which is attached.

The respondent

☑ agrees

☐ does not agree with the above terms.

L'intimé

☐ consent

☐ ne consent pas aux modalités susmentionnés.

(c) The petitioner is not seeking an order for custody and

☐ is content that a previous court order for custody continue in force, or

☐ is attempting to obtain an order for custody in another proceeding, full particulars of which are as follows: *(Give name of court, court file number and particulars of the order or proceeding.)*

c) Le requérant ne demande pas d'ordonnance de garde et

☐ consent à la continuation d'une ordonnance de garde antérieure, ou

☐ tente d'obtenir une ordonnance de garde dans une autre instance, dont les détails sont les suivants : *(Donnez le nom de la cour, le numéro du dossier et les détails de l'ordonnance ou de l'instance.)*

(d) The petitioner seeks an order for access (a visiting arrangement) and is content that the respondent have an order for custody of the following children on the following terms: *(Be sure that this claim agrees with the claim under clause 1(b).)*

Name of child Nom de l'enfant	Terms of order Modalités de l'ordonnance

d) Le requérant demande une ordonnance d'accès (arrangements concernant les droits de visite) et consent à ce que l'intimé obtienne une ordonnance de garde pour les enfants suivants, selon les modalités qui suivent : *(Assurez-vous que la présente demande est conforme à la demande présentée en vertu de l'alinéa 1b).)*

The respondent

☐ agrees

☐ does not agree with the above terms.

L'intimé

☐ consent

☐ ne consent pas aux modalités susmentionnés.

(e) The following is the existing access (visiting arrangement) for the spouse who does not have the children living with him or her: *(Give details such as days of the week, hours of visit and place of access.)*

e) Les droits d'accès actuels (arrangements concernant les droits de visite) de l'époux qui ne réside pas avec les enfants sont les suivants : *(Donnez les détails tels les jours de la semaine, les heures de visite et le lieu d'accès.)*

The respondent has access to the children every Sunday from 10AM to 6PM at 57 Lilac Street, Moncton NB. The respondent also has access for two weeks during the summer months, a two-month notice is given to the petitioner.

(f) The above access (visiting arrangement) is

☑ satisfactory.

☐ not satisfactory.

(If not satisfactory, give reasons and describe how the access should be changed.)

f) Les droits d'accès (arrangements concernant les droits de visite) susmentionnés sont

☐ satisfaisants.

☐ insatisfaisants.

(Si les droits d'accès ne sont pas satisfaisants, en donner les raisons et décrire comment les arrangements devraient être modifiés.)

(g) The order sought in clause (b) or (d) is in the best interests of the children for the following reasons:

Since their birth I have taken care of the children. There is a strong bond between the children and me. I am able to meet their needs. They have a stable and secure relationship with me.

g) L'ordonnance demandée en vertu de l'alinéa b) ou d) est dans l'intérêt supérieur des enfants pour les raisons suivantes:

(h) The following changes in the circumstances of the spouses are expected to affect the children, their custody and the access (visiting arrangement) in the future:

h) Les changements dans la situation des époux qui sont susceptibles d'affecter les enfants, leur garde et les droits d'accès (arrangements concernant les droits de visite) sont les suivants :

(i) The existing arrangements between the spouses for support for the children are as follows:

i) Les arrangements actuels entre les époux pour les aliments des enfants sont les suivants :

Amount paid Montant payé	Time period (weekly, monthly, etc.) Période (paiement hebdomadaire, mensuel etc.)	Paid by (petitioner or respondent) Montant payé par (le requérant ou l'intimé)	Paid for (name of child) Montant payé pour le bénéfice de (nom de l'enfant)
$520.00 (for both children)	monthly	respondent	Anne Smith
	monthly	respondent	Michel Smith

(j) The existing support arrangements

- [x] are being honoured.
- [ ] are not being honoured.

(If not being honoured, specify how much is unpaid and for how long. If you seek an order for payment of part or all of the unpaid amount, be sure to include it in the claim under clause 1(b).)

j) Les arrangements actuels relativement aux versements d'aliments

- [ ] sont respectés
- [ ] ne sont pas respectés.

(Si les arrangements ne sont pas respectés, précisez le montant des arrérages et depuis quand ils sont dûs. Si vous demandez une ordonnance pour le paiement partiel ou total de l'arrérage, assurez-vous qu'une demande en vertu de l'alinéa 1b) est incluse.)

(k) The petitioner proposes that the support arrangements for the children should be as follows: *(Be sure that this claim agrees with the claim under clause 1(b).)*

k) Le requérant propose que les arrangements relatifs au paiement d'aliments pour le bénéfice des enfants soient les suivants: *(Assurez-vous que la présente demande est conforme à la demande présentée à l'alinéa 1b).)*

Amount to be paid Montant à être payé	Time period (weekly, monthly, etc.) Période (paiement hebdomadaire, mensuel, etc.)	To be paid by (petitioner or respondent) Montant à être payé par (le requérant ou l'intimé)	To be paid for (name of child) Montant à être payé pour le bénéfice de (nom de l'enfant)
$520.00 (for both children)	monthly	respondent	Anne Smith
	monthly	respondent	Michel Smith

(k.1) The nature and amount of any special expenses are as follows:

k.1) La nature et le montant de toutes dépenses spéciales sont comme suit :

Nature of special expense Nature des dépenses spéciales	Amount to be paid Montant à être payé	Time period (weekly, monthly, etc.) Période (paiement hebdomadaire, mensuel, etc.)	To be paid by (petitioner or respondent) Montant à être payé par (le requérant ou l'intimé)	To be paid for (name of child) Montant payé pour le bénéfice de (nom de l'enfant)

(l) The educational needs of the children

- [x] are being met.
- [ ] are not being met.

(If not being met, give particulars.)

l) Les besoins éducationnels des enfants

- [ ] sont satisfaits
- [ ] ne sont pas satisfaits

(Si ces besoins ne sont pas satisfaits, donnez les détails.)

OTHER COURT PROCEEDINGS (14)

8 The following are all other court proceedings with reference to the marriage or any child of the marriage: *(Give the name of the court, the court file number, the kind of order the court was asked to make and what order, if any, the court made. If the proceeding is not yet completed, give its current status.)*

There are no other proceedings with reference to the marriage or any child of the marriage.

AUTRES PROCÉDURES JUDICIAIRES

8 Toutes les procédures judiciaires relatives au mariage ou aux enfants à charge sont les suivantes : *(Donnez le nom de la cour, le numéro du dossier, le genre d'ordonnance demandée et l'ordonnance rendue par la cour, s'il y a lieu. Si l'instance n'a pas été menée à conclusion, dites à quelle étape elle se trouve.)*

DOMESTIC CONTRACTS, SEPARATION AGREEMENTS, MINUTES OF SETTLEMENT OR OTHER FINANCIAL ARRANGEMENTS (15)

9 (a) The spouse have entered into the following domestic contracts, separation agreements, minutes of settlement or other written or oral financial arrangements: *(Give particulars and attach copies. State whether the arrangements are now in effect. If support payments have not been paid in full, state the amount that has not been paid.)*

Date

Nature of arrangements

_____, 20____ Separation Agreement

A copy is attached as Exhibit "A". The Spouses agreed that the petitioner would have custody of the children and the respondent would have access and would pay $520 a per month to support the 2 children starting _____, 20____. The agreement is now in effect. The respondent is not in arrears.

(b) ***(Where a claim for support or division of property is made, check the appropriate box or boxes.)***

☑ The Financial Statement of the petitioner, in the form prescribed by the Rules of Court, is attached.

☑ The income information of the petitioner required by the child support guidelines is attached.

☐ I claim a division of property not listed in the Financial Statement. A list of all property that I seek to have divided is attached and my claim to each item of property is set out on the list.

☑ The petitioner and respondent agree that corollary relief should be granted as set out above in the petitioner's claim.

CONTRATS DOMESTIQUES, ENTENTES DE SÉPARATION, COMPTE RENDU D'UN RÈGLEMENT AMIABLE OU AUTRES ARRANGEMENTS FINANCIERS

9 a) Les époux ont conclu un contrat domestique, une entente de séparation, un compte rendu d'un règlement amiable ou autres arrangements financiers verbaux ou écrits qui suivent : *(Donnez les détails et annexez des copies. Mentionnez s'il y a des arrangements en vigueur. Si des paiements alimentaires sont en souffrance, citez les montants qui n'ont pas été payés.)*

Genre d'arrangement

b) ***(Lorsqu'une demande d'ordonnance alimentaire ou de répartition des biens est faite, cochez la ou les cases applicables.)***

☐ L'état financier du requérant, en la forme prescrite par les règles de procédure, est annexé à la présente demande.

☐ Les renseignements sur le revenu du requérant requis en vertu des lignes directrices sur les ordonnances alimentaires au profit d'un enfant sont annexés à la présente demande.

☐ Je demande une répartition de biens non énumérés dans l'état financier. Une liste de tous les biens dont je demande la répartition est annexée et ma réclamation de chacun de ces biens y est établie.

☐ Le requérant et l'intimé consentent à ce que les mesures accessoires telles que décrites dans la demande du requérant soient accordées.

COLLUSION, CONDONATION AND CONNIVANCE

10 (a) There has been no collusion in relation to this proceeding.

(b) *(Where breakdown of the marriage is alleged on the basis of adultery or cruelty, check the box below, unless there has been either connivance or condonation on the part of the petitioner, in which case give full particulars of the facts on which the Court will be asked to find that the public interest would be better served by granting the divorce.)*

☐ There has been no condonation or connivance on the part of the petitioner.

COLLUSION, PARDON ET CONNIVENCE

10 a) Il n'y a eu aucune collusion relativement à la présente demande.

(b) *(S'il est allégué qu'il y a échec du mariage par raison d'adultère ou de cruauté, cochez la case ci-dessous, sauf s'il y a eu connivence ou pardon de la part du requérant; dans ce cas, précisez tous les faits sur lesquels la cour sera appelée à se prononcer pour conclure que l'intérêt public serait mieux servi si le jugement sollicité était rendu.)*

☐ Il n'y a eu aucun pardon ou aucune connivence de la par du requérant.

PLACE OF TRIAL

11 The petitioner proposes that this proceeding be tried at

Moncton.

LIEU DU PROCÈS

11 Le requérant propose que la présente instance soit entendu à _____.

DECLARATION OF PETITIONER

12 I have read and understand this Petition for Divorce. The statements of which I have personal knowledge are true, and those of which I do not have personal knowledge I believe to be true.

DATED at Moncton, this 1st
City, Prov.
day of February, 2008

signature of petitioner

DÉCLARATION DU REQUÉRANT

12 J'ai lu la présente requête en divorce et j'en comprends le sens. Les faits qui y sont énoncés et dont j'ai une connaissance personnelle sont vrais et je crois être vrais ceux dont je n'ai pas de connaissance personnelle.

FAIT à _____ le _____
Ville, Prov.
_____ _____.

signature du requérant

Address for service within New Brunswick:

2 Poplar Street
Moncton, NB
E1C 1A1

Adresse pour fins de signification au Nouveau-Brunswick :

STATEMENT OF SOLICITOR

13 *(Where petitioner has retained a solicitor)*

I _____, solicitor for the petitioner, certify that I have complied with the requirements of section 9 of the Divorce Act.

(Where in the circumstances it would clearly not be appropriate to discuss the matters in subsection 9(1) with the petitioner, set out the circumstances.)

DATED at _____, this _____ day of _____, _____.

signature of solicitor

solicitor's business address

DÉCLARATION DE L'AVOCAT

13 *(Si le requérant a retenu les services d'un avocat)*

JE SOUSSIGNÉ _____, avocat du requérant, atteste m'être conformé aux exigences de l'article 9 de la Loi sur le divorce.

(Si les circonstances en l'espèce sont telles qu'il serait inapproprié de discuter des questions visées au paragraphe 9(1) avec le requérant, indiquez ces circonstances.)

FAIT à _____ le _____

_____ _____.

signature de l'avocat

adresse professionnelle de l'avocat

End Notes – Petition for Divorce (Form 72A)

1. When you file your petition, the Registrar will assign a file number. You need to put this number on all your court documents.

2. You only need to complete one side of this form (either the English or French side.)

3. See Appendix 5 to choose the judicial district for your county.

4. Give your full name as it appears on the marriage certificate.

5. Give the full name and address of the respondent. Your spouse is the respondent.

6. Write the language (English or French) you prefer to use in the divorce hearing, if there is a hearing.

7. Leave this blank. When the Registrar receives the Petition for Divorce, the Registrar will add the full date.

8. CLAIM – Make your claim very clear. If you are asking the court for custody or access, write the request in this place. Write down if you are asking for support for yourself or a child. If you would like to have provisions of a separation agreement included, refer specifically to the provisions. Attach a copy of the separation agreement to the Petition for Divorce.

9. RECONCILIATION – If you and your spouse did not try to reconcile, strike out paragraph (b). If you did try to reconcile, write out what efforts you made.

10. PARTICULARS OF MARRIAGE – Attach the original or certified copy of your marriage certificate. Make sure that the information in the Petition for Divorce is the same as the information on the marriage certificate.

11. Place the maiden name in this blank, rather than a former surname from a previous marriage.

12. RESIDENCE AND JURISDICTION – Residence means the place where you are now living. Under the *Divorce Act* you or the respondent must live in a province for at least one year before the filing of the petition for Divorce.

13. CHILDREN – Check whether the support arrangements proposed in paragraph 7(k) agree with the guidelines. You only need to write down the children that are dependants and that you are requesting support for.

14. OTHER COURT PROCEEDINGS – Give the details if you or your spouse have started other court proceedings concerning the marriage or the children of the marriage.

15. SEPARATION AGREEMENTS – Give details about any agreements and attach a copy.

16. COLLUSION, CONDONATION AND CONNIVANCE – Strike out paragraph 10(b) because condonation and connivance apply to adultery or cruelty.

17. PLACE OF TRIAL – The place of trial must be the same as the judicial district. See note 3.

18. DECLARATION OF PETITIONER – Include your full address. It must be a street address. Also, include your mailing address if that is different than your street adress.

DO NOT FORGET TO SIGN AND DATE THIS FORM ON THE LAST PAGE, AND INCLUDE YOUR ADDRESS IN THE SPACE PROVIDED FOR IT.

Example E.1.2: Joint Petition for Divorce

Court file number
1301- ①

IN THE COURT OF QUEEN'S BENCH OF NEW BRUNSWICK
FAMILY DIVISION
JUDICIAL DISTRICT OF Fredericton ②

Claire Cook

PETITIONER

-and-

Roger Cook ③

JOINT PETITIONER

Signed and sealed for the Court of Queen's Bench at Fredericton by the Deputy Registrar of the Court at Fredericton on the _____ day of _____

④

_____
Deputy Registrar

JOINT PETITION FOR DIVORCE
(FORM 72B)

(Strike out portions that are not applicable.)

CLAIM ⑤

1 The petitioner and joint petitioner jointly seek:

(a) a divorce;

(b) under the *Divorce Act*
(i)

(ii)

(iii)

(c) under the *Marital Property Act*
(i)

(ii)

(iii)

(State precisely everything you want the Court to include in the divorce judgment. Everything you want to include must have been agreed to by both spouses. If child support is sought, set out the number of children under the age of majority, the number of children over the age of majority and the nature and amount of any special expenses. If you want to include provisions of a domestic contract, separation agreement, minutes of settlement, previous court order or any other document in the divorce judgment, attach a copy of the document and refer to the specific provisions to be included.)

GROUNDS

2 There has been a breakdown of the marriage by reason of the fact that the spouses have lived separate and apart since the 4th day of March, 2009 and are now living separate and apart.

RECONCILIATION (6)

3(a) There is no possibility of reconciliation of the spouses.

~~(b) *(Where applicable)* The following efforts to reconcile have been made:~~

_____

_____

_____

PARTICULARS OF MARRIAGE (7)

(Attach a marriage certificate or explain its absence.)

4 (a) The petitioner and the joint petitioner were married on the 14th day of February, 1996

at Fredericton, NB
(place of marriage).

(b) The petitioner's surname at birth was Albert.

(c) The joint petitioner's surname at birth was Cook

(d) The marital status of the petitioner and the joint petitioner at the time of the marriage was:

petitioner Single, joint petitioner Single.

(e) The petitioner was born on the 12th day of June, 1970

(f) The joint petitioner was born on the 9th day of July, 1970.

RESIDENCE AND JURISDICTION (8)

5 (a) The petitioner resides at Fredericton, in the Province of New Brunswick.

(b) The joint petitioner resides at Fredericton, in the Province of New Brunswick.

(c) *(Check the appropriate box)*

☐ The petitioner has been

☐ The joint petitioner has been

☑ Both the petitioner and the joint petitioner have been

ordinarily resident in the Province of New Brunswick for at least one year immediately preceding the date of the commencement of this proceeding

CAPACITY

6 Both the petitioner and the joint petitioner are of the full age of 19 years and neither of them suffers from any legal disability.

CHILDREN (9)

7 (a) The following are all the living children as defined by the *Divorce Act*.

Full name	Birth date	School and grade or year	Person(s) with whom child lives and length of time child has lived there
There are no children of the marriage.			

The children ordinarily reside in *(municipality and province, state or country)*

(b) The petitioner and the joint petitioner seek an order on consent for custody or joint custody of the following children on the following terms: *(Be sure that this claim agrees with the claim under clause 1(b).)*

Name of child	Terms of the order

(c) The petitioner and the joint petitioner are not seeking an order for custody and

[ ] are content that a previous court order for custody continue in force, or

[ ] are attempting to obtain an order for custody in another proceeding, full particulars of which are as follows: *(Give name of court, court file number and particulars of the order or proceedings.)*

(d) The petitioner and the joint petitioner seek an order on consent for access (a visiting arrangement) with the following children on the following terms: (*Be sure that this paragraph agrees with the claim under clause 1(b).*)

Name of child	**Terms of the order**
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

(e) The following is the existing access (visiting arrangement) for the spouse who does not have the children living with him or her. (*Give details such as days of the week, hours of visit and place of access.*)

_____

_____

_____

_____

_____

_____

_____

_____

(f) The above access (visiting arrangement) is

[ ] satisfactory

[ ] not satisfactory

(*If not satisfactory, give reasons and describe how access should be changed.*)

_____

_____

_____

_____

_____

_____

_____

_____

(g) The order sought in clause (b) or (d) is in the best interests of the children for the following reasons:

_____

_____

_____

_____

_____

_____

_____

_____

(h) The following changes in the circumstances of the spouses are expected to affect the children, their custody and the access (visiting arrangement) in the future:

_____

_____

_____

_____

_____

_____

_____

_____

(i) The existing arrangements between the petitioner and the joint petitioner for support for the children are as follows:

Amount paid	Time period (weekly, monthly, etc)	Paid by (petitioner or joint petitioner)	Paid for (name of child)
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

(j) The existing support arrangements

[ ] are being honoured
[ ] are not being honoured

(If not being honoured, specify how much is unpaid and for how long. If you are agreed on an order for payment of part or all of the unpaid amount, be sure to include it in the claim under clause 1(b).)

_____

_____

_____

_____

_____

(k) The petitioner and the joint petitioner propose that the support arrangements for the children should be as follows: *(Be sure that this claim agrees with the claim under clause 1(b).)*

Amount to be paid	Time period (weekly, monthly, etc)	To be paid by (petitioner or joint petitioner)	To be paid for (name of child)

(k.1) The nature and amount of any special expenses are as follows:

Nature of special expense	Amount to be paid	Time period (weekly, monthly, etc.)	To be paid by (petitioner or joint petitioner)	To be paid for (nameof child)

(l) The educational needs of the children

[ ] are being met
[ ] are not being met.

(If not being met, give particulars.)

_____

_____

_____

OTHER COURT PROCEEDINGS (10)

8 The following are all other court proceedings with reference to the marriage or any child of the marriage: (*Give the name of the court, the court file number, the kind of order the court was asked to make and what order, if any, the court made. If the proceeding is not yet completed, give its current status.*)

There are no other proceedings with respect to this marriage.

DOMESTIC CONTRACTS, SEPARATION AGREEMENTS, MINUTES OF SETTLEMENT OR OTHER FINANCIAL ARRANGEMENTS (11)

9 The spouses have entered into the following domestic contracts, separation agreements, minutes of settlement or other written or oral financial arrangements: (*Give particulars and attach copies. State whether the arrangements are now in effect. If support payments have not been paid in full, state the amount that has not been paid.*)

Date	Nature of arrangements
February 14, 1996	Domestic contract concerning marital property. All marital property has been divided pursuant to the contract.

NO COLLUSION

10 There has been no collusion in relation to this divorce proceeding.

DECLARATION OF PETITIONER AND JOINT PETITIONER (12)

11 The petitioner and the joint petitioner propose that this proceeding be tried at Fredericton, NB

12 (a) I have read and understand this Joint Petition for Divorce. The statements in it are true, to the best of my knowledge, information and belief.

(b) I understand that I have the right to seek independent legal advice concerning this proceeding and to retain my own separate counsel.

(c) I am aware that no application for a division of property under the *Marital Property Act* shall be made later than 60 days after a divorce takes effect except under the circumstances set out in subsection 3(4) of the *Marital Property Act*.

Date May 12, 2008 Claire Cook
signature of petitioner

Address *(if no solicitor retained)*
Claire Cook
456 Circle Avenue
Fredericton, NB E3E 3E4

Date May 12, 2008 Roger Cook
signature of joint petitioner

Address *(if no solicitor retained)*
Roger Cook
123 Main Street
Fredericton, NB
E3E 3E3

45-4168(09/06) 7

STATEMENT OF SOLICITOR FOR PETITIONER

(Strike out this paragraph if petitioner has not retained a solicitor)

13 I, _____, solicitor for the petitioner, certify to
(name)
this Court that I have complied with the requirements of section 9 of the *Divorce Act*.
(Where in the circumstances it would clearly not be appropriate to discuss the matters in subsection 9(1) with the petitioner, set out the circumstances.)

I also certify that I have advised the joint petitioner that he or she has the right to seek independent legal advice and retain separate counsel in the proceeding.

Date _____ _____
signature of solicitor

STATEMENT OF SOLICITOR FOR JOINT PETITIONER

(Strike out this paragraph if joint petitioner has not retained a solicitor)

14 I, _____, solicitor for the joint petitioner, certify to
(name)
this Court that I have complied with the requirements of section 9 of the *Divorce Act*.
(Where in the circumstances it would clearly not be appropriate to discuss the matters in subsection 9(1) with the joint petitioner, set out the circumstances.)

I also certify that I have advised the petitioner that he or she has the right to seek independent legal advice and retain separate counsel in the proceeding.

Date _____ _____
signature of solicitor

(Give the name, business address and telephone number, including any fax number, of solicitor(s). Give the name, address and telephone number, including any fax number, of the petitioner or the joint petitioner if he or she has not retained a solicitor.)

End Notes – Joint Petition for Divorce (Form 72B)

1. When you file your petition, the Registrar will assign a file number. You need to put this number on all your court documents.

2. See Appendix 5 to choose the judicial district for your county.

3. Give your full names as they appear on the marriage certificate. You and your spouse are the petitioners.

4. Leave this blank. When the Registrar receives the Petition for Divorce, the Registrar will add the full date.

5. CLAIM – Make your claim very clear. With a joint petition, you can ask only for a divorce and for relief to be granted by an order on consent. If you would like to have provisions of a separation agreement included, refer specifically to the provisions. Attach a copy of the separation agreement to the Petition for Divorce.

6. RECONCILIATION – If you and your spouse did not try to reconcile, strike out paragraph (b). If you did try to reconcile, write out what efforts you made.

7. PARTICULARS OF MARRIAGE – Attach the original or certified copy of your marriage certificate. Make sure that the information in the Petition for Divorce is the same as the information on the marriage certificate.

8. RESIDENCE AND JURISDICTION – Residence means the place where you are now living. Under the *Divorce Act* you or the joint petitioner must live in a province for at least one year before the Joint Petition is filed.

9. CHILDREN – Check whether the support arrangements proposed in paragraph 7(k) agree with the guidelines.

10. OTHER COURT PROCEEDINGS – Give the details if you, or your spouse, have started other court proceedings concerning the marriage or the children of the marriage.

11. SEPARATION AGREEMENTS – Give details about any agreements and attach a copy.

12. DECLARATION OF PETITIONERS – Include your full address. It must be a street address. Also include your mailing address if that is different than your street address.

DO NOT FORGET BOTH MUST SIGN AND DATE THIS FORM ON THE LAST PAGE, AND INCLUDE YOUR ADDRESSES IN THE SPACE PROVIDED.

Example E.15: Affidavit - Supporting Joint Petition

Court File Number 1301-0000

IN THE COURT OF QUEEN'S BENCH OF NEW BRUNSWICK
FAMILY DIVISION
JUDICIAL DISTRICT OF MONCTON

BETWEEN:

Roger Cook -and- Claire Cook

PETITIONERS

AFFIDAVIT

WE, Roger Cook of the city of Fredericton in the County of York and Province of New Brunswick, plumber, and Claire Cook, of the city of Fredericton in the County of York and Province of New Brunswick, caterer, MAKE OATH AND SAY AS FOLLOWS:

1. We are the petitioners named in the Petition for Divorce dated the _____ day of _____, 20___.
2. Both petitioners have been ordinarily resident in New Brunswick for at least one year immediately before the date on which the Petition for Divorce was filed.[23]
3. There is no possibility of reconciliation of the petitioners. The petitioners have been living separate and apart since the _____day of _____, 20___. There has been little contact between the petitioners since the date of separation.
4. The petitioners confirm that all the information in the Petition for Divorce is correct.
5. A certificate of marriage is attached to the Petition for Divorce.
6. The petitioners separated on the _____day of_____, 20__ and have remained separate and apart since that day. This has resulted in a permanent breakdown of the marriage. On the date of separation and continuously since then it has been the intention of the petitioners to remain separate and apart.
7. There are no children of the marriage.
8. Neither petitioner is directly or indirectly a party to any agreement or conspiracy for the purpose of subverting the administration of justice, including any agreement, understanding or arrangement to make up or hide evidence or to deceive the court.
9. The petitioners do not wish to claim a division of property at this time. Both petitioners are aware that no application for a division of property under the *Marital Property Act* can be made more than 60 days after the divorce takes effect except in the circumstances in subsection 3(4) of the *Marital Property Act*.

SWORN before me at
_____,
in the County of Westmorland,
the Province of New Brunswick, this
_____ day of _____, 20____.

_____

A Commissioner of Oaths[24]
Being a solicitor
or
My appointment expires
(Month....Day....Year)

Roger Cook
_____
Roger Cook

Clair Cook
_____
Clair Cook

[23] *If you live in different cities, state which one of you is living in the judicial district that you are applying in.*
[24] *Print the name of the Commissioner of Oaths under the line.*

Appendix 2: Documents You Need to Prepare for the Trial Record (if you Proceed by Court Hearing)

In order to prepare your Trial Record by Court Hearing, you must create the required documents below:

1. **Cover Letter** (See Example E.6 page 28).
2. **Cover Page** (the Trial Record – Example E.7 page 29).
3. **Index** (See Example E.16 page 67).
4. **Petition for Divorce** with attached documents (marriage certificate, and, if applicable, financial statements and other income information and a separation agreement if you made one). An Amended Petition would go here as well.
5. **Proof of Service**, which could be the **Affidavit of Service** or the **Acknowledgement of Receipt Card**, should be attached to the front of the original Petition for Divorce.
6. **Answer** received from Respondent.
7. **Clearance Certificate** (certified copy).
8. **Certificate of Readiness** (Form 47B). (See Example E.17, page 68 for court hearing.)

Be sure to make and keep a copy of all your documents for your own records.

Example E.16: Index for the Trial Record (Court Hearing)

Court File Number **1301-0000**

IN THE COURT OF QUEEN'S BENCH OF NEW BRUNSWICK
FAMILY DIVISION
JUDICIAL DISTRICT OF MONCTON

BETWEEN:

Marie Smith
PETITIONER

-and-

Robert Smith
RESPONDENT

INDEX

(for hearing)

1. Certificate of Readiness
2. Clearance Certificate from the Central Registry of Divorce Proceedings
3. Affidavit of Service of Petition of Divorce on the Respondent
4. Petition for Divorce of Marie Smith, with attached documents
5. Answer received from Respondent

Example E.17: Certificate of Readiness (Court Hearing)

Court File Number **1301-0000**

IN THE COURT OF QUEEN'S BENCH OF NEW BRUNSWICK
FAMILY DIVISION
JUDICIAL DISTRICT OF MONCTON

BETWEEN:[25]

Marie Smith
PETITIONER

-and-

Robert Smith
RESPONDENT

CERTIFICATE OF READINESS (for hearing) (FORM 47B)

I, **Marie Smith**, petitioner, certify that the pleadings are closed and that I am now ready to proceed to trial.[26]

Having consulted with the respondent, I inform the court that:

a) we agree that all pre-trial procedures have been completed;

b) we estimate the hearing of the petition will take 15 minutes;

c) the parties intend to use the English language;

d) the services of an interpreter will not be required.

DATED in **Moncton**, New Brunswick, this _____ day of _____, 20_____.

Marie Smith

Marie Smith, Petitioner

[25] *If you filed a Joint Petition for Divorce, both parties are petitioners. Wherever "Respondent" is used in an example, change it to "Joint Petitioner".*

[26] *If you filed a Joint Petition for Divorce, state:*
"We, _____ and _____, petitioners, certify that the pleadings are closed and that we are now ready to proceed to trial. We inform the court that: ..."

Appendix 3: Breakdown of the Marriage

This guide is intended for people who want a divorce based on the ground that they have lived **separate and apart** for at least one year. Although the only ground for divorce is breakdown of the marriage, there are different ways that you can demonstrate your marriage has broken down. **Read this appendix to find out more about the terminology related to the breakdown of the marriage.**

A **ground for divorce** is a reason for divorce that the law recognizes. Under the *Divorce Act,* the only ground for divorce is the **breakdown of the marriage**. A marriage has broken down if one of three circumstances has developed:

- The spouses have been living **separate and apart** for at least **one year** immediately before the decision of the court;
- one spouse (the one who is the *respondent* in the divorce petition) has committed **adultery**; or
- one spouse (the one who is the *respondent* in the divorce proceeding) has treated the other spouse (the petitioner) with **physical or mental cruelty** that makes it intolerable for the spouses to stay together.

If any of these circumstances apply, you can ask the court for a divorce. If you use separation as the reason for divorce, it does not matter who is 'at fault'.

> **Did You Know?**
>
> Although the only ground for divorce is breakdown of the marriage, 97% of New Brunswickers use "separation" as proof. That means they must show that they have lived "separate and apart" for at least one year before the court decision.

Separate and Apart

Living separate for at least one year provides evidence of the breakdown of the marriage.

NOTE: You can file your divorce petition when you have been separated for *less than one year,* but you cannot file the **Trial Record** until a full year has passed. The **court** will wait until one year is up before giving you a divorce on the **ground of separation.**

> **"Separate and Apart"**
>
> The term "separate and apart" means that a couple does not live as spouses. Two people can live in the same house and still lead separate lives, and two people can live in different places while still married. To determine whether a couple has been separate and apart consider things like whether they made decisions together and whether they willingly spent time together, like eating their meals together.

What does separation mean in legal terms?

Separation happens when one spouse leaves the marriage relationship with the intention of ending the marriage relationship. In legal terms, separation means withdrawing from the marital "consortium". **Consortium** includes love, sexual relations, affection, companionship, and cooperation. Consortium means the marriage relationship as a whole, which can survive without all of its parts. Consortium continues if the spouses are temporarily separated without intending to end the relationship. It is possible for consortium to continue after sexual relations stop. The court will not grant a divorce if consortium continues.

It is possible for spouses to live in the same house or apartment and yet live separately if each person leads an independent life. In some cases, courts determined that couples lived separate and apart even though the couple lived under the same roof. In these cases, the spouses had separate bedrooms and there were no sexual relations. There was little communication between them, they did not perform services for each other, and they did not eat or socialize together.

Do we both have to agree to the separation?

Both spouses do not have to agree to the separation. When one spouse leaves, either spouse may request a divorce in a petition to the court. Both spouses can request a divorce together in a joint petition, if they wish. It does not matter for the divorce proceedings why the spouse left.

A separation agreement is a mutual understanding between spouses in the process of divorce or legal separation. It is usually a written agreement that is signed by both spouses after they have received independent legal advice. It includes the spouses' arrangement concerning matters such as spousal support, division of property, custody and child support. A separation agreement can be filed with the court for the purpose of enforcement of support. The court can consider the separation agreement when deciding the terms of the divorce, but the court does not have to use it.

What if we try to reconcile for a while?

You can still get a divorce if you try to reconcile. After the separation, spouses can live together again ("cohabit") on one or more occasions, as long as the occasions do not total more than 90 days. If you lived apart for a few months and then lived together for more than 90 days, you would interrupt the one-year separation. To qualify under the one-year separation ground, you would have to start counting from the day of the new separation.

There is an exception to the rule against interrupting the one-year separation for longer than 90 days. The court can decide that the separation was not interrupted if one spouse becomes incapable of having an intention to live separately, for example, because of temporary mental incompetence or commitment to a psychiatric institution.

Actions that will stop the divorce petition: The Three C's

- **Collusion** happens when the spouses agree or conspire to stop the administration of justice, or arrange to make up or hide evidence or to deceive the court. For example, there is collusion if the spouses agree to shorten the one-year separation period by using false dates.
- **Connivance** happens when one spouse implies approval for the other spouse to commit adultery or cruelty or is not concerned that the other spouse has committed adultery or cruelty. The approving, or unconcerned, spouse cannot later use that act of adultery or cruelty as a ground for divorce.
- **Condonation** happens when a spouse commits adultery or cruelty and the other spouse knows but voluntarily forgives or ignores the act and continues the marriage relationship. Under these circumstances, the spouses cannot use that particular act of adultery or cruelty as the reason for the breakdown of the marriage.

How do I prove the separation period?

To prove that your marriage broke down because of a one-year separation, you must give the exact dates involved. You must also explain whether you made any attempts at reconciliation, such as living together or going to a marriage counsellor. If you have a **separation agreement**, this legal document provides evidence of a serious intention to end the relationship.

Postponing or Refusing a Divorce

If the spouses do not demonstrate that they have made reasonable arrangements for the support of the children, the court must postpone the divorce until the spouses do so. For guidance on what is reasonable, the Government of Canada has established the Federal Child Support Guidelines. See the Regulations of the *Divorce Act* for the tables. The amounts of child support payable according to the Guidelines are based on the annual income of the spouse who does not have custody of the child(ren) and the province where he/she lives.

The court will also make sure that there has not been any **collusion**, **connivance** or **condonation of misconduct** by the spouses. If the court discovers collusion, the court must refuse a divorce. In cases of connivance or condonation, the court must refuse a divorce unless the court considers the divorce to be in the public interest.

Appendix 4: Getting a Copy of Your Marriage Certificate

If you were married in another Canadian province or territory and do not have an original marriage certificate, you must get it from that province. The address of each provincial authority is set out below. Write and ask for a marriage certificate application form. Mention that it is for a divorce proceeding. There may be specific requirements.

New Brunswick Service New Brunswick Vital Statistics P.O. Box 1998, Fredericton, NB E3B 5G4 Telephone: (506) 453-2385 Fax: (506) 444-4139	**Alberta** Vital Statistics 10365-97 Street, Box 2023 Edmonton, AB T5J 4W7 Phone: (780) 427-7013 Fax: (780) 422-9117
British Columbia Division of Vital Statistics Ministry of Health Planning P.O. Box 9657, Stn. Prov. Govt Victoria, BC V8W 9P3 Phone: (250) 952-2681 Fax: (250) 952-2527	**Manitoba** Vital Statistics Agency 254 Portage Avenue Winnipeg, MB R3C 0B6 Phone: (204) 945-3701 Fax: (204) 948-3128
Newfoundland Vital Statistics Division / Department of Government Services 5 Mews Place P.O. Box 8700 St. John's NFLD A1B 4J6 Phone: (709) 729-3308 Fax: (709) 729-0946	**Nova Scotia** Service Nova Scotia and Municipal Relations Services P.O. Box 157 Halifax, NS B3J 2M9 Phone: (902) 424-4381 Fax: (902) 424-0678
Northwest Territories Vital Statistics 107 MacKenzie Road Room 205 Bag 9, Govt. of the NWT Inuvik, NWT X0E 0T0 Phone: (867) 777-7422 or 777-4000 Fax: (867) 777-3197	**Nunavut** Vital Statistics Bag #3, Health and Social Services Rankin Inlet, Nunavut X0C 0G0 Phone: (867) 645-5002 Fax: (867) 645-2997
Ontario Vital Statistics / Office of the Registrar General P.O. Box 4600 189 Red River Road Thunder Bay, ON P7B 6L8 Phone: (416) 325-8305 / 1-800-567-3900 Fax: (807) 343-7459	**Prince Edward Island** Vital Statistics / Department of Health & Social Services P.O. Box 3000 35 Douses Road Montague, PEI C0A 1R0 Phone: (902) 838- 0880 Fax: (902) 838-0883

Quebec Le Directeur de létat civil 2535 boulevard Laurier Sainte-Foy, PQ G1V 5C5 Phone: (418) 643-3900 ou 1-800-567- Fax: (418) 646-3255	**Saskatchewan** Customer Support - Vital Statistics Information Services Corporation 1301 1st Ave Regina, SASK S4R 8H2 Phone: (306) 787-3092 Fax: (306) 787-2288
Yukon Vital Statistics Agency Health and Social Services P.O. Box 2703 Whitehorse, YUKON Y1A 2C6 Phone: (867) 667-5207 Fax: (867) 393-6486	**People married outside Canada:** If you were married outside Canada, contact your local Vital Statistics office to confirm that your marriage certificate is appropriate. The marriage certificate must be in English or French or there must be a translation provided.

Appendix 5: Judicial Districts in New Brunswick

Bathurst Court of Queen's Bench, Family Division P.O. Box 5001, 254 St. Patrick Street Bathurst, NB E2A 3Z9 Court Office: 547-2150	**Judicial District of Bathurst includes:** Gloucester County
Campbellton Court of Queen's Bench, Family Division P.O. Box 5001, 157 Water Street Campbellton, NB E3N 3H5 Court Office: 789-2364	**Judicial District of Campbellton includes:** Restigouche County
Edmundston Court of Queen's Bench, Family Division P.O. Box 5001, 121 Rue de l'Église Edmundston, NB E3V 3L3 Court Office: 735-2029	**Judicial District of Edmundston includes** Madawaska County and Drummond and Grand Falls of Victoria County
Fredericton Court of Queen's Bench, Family Division P.O. Box 6000, 427 Queen Street Fredericton, NB E3B 5H1 Court Office: 453-2015	**Judicial District of Fredericton includes** York County, Sunbury County and Queens County
Miramichi Court of Queen's Bench, Family Division 673 King George Highway Miramichi, NB E1V 1N6 Court Office: 627-4023	**Judicial District of Miramichi includes:** Northumberland County
Moncton Court of Queen's Bench, Family Division P.O. Box 5001, 770 Main Street Moncton, NB E1C 8R3 Court Office: 856-2304	**Judicial District of Moncton includes:** Albert County Westmorland County and Kent County
Saint John Court of Queen's Bench, Family Division P.O. Box 5001, 110 Charlotte Street Saint John, NB E2L 4Y9 Court Office: 658-2560	**Judicial District of Saint John includes:** Charlotte County, Saint John County and Kings County
Woodstock Court of Queen's Bench, Family Division P.O. Box 5001, 689 Main Street Woodstock, NB E7M 5C6 Court Office: 325-4414	**Judicial District of Woodstock includes:** Carleton County and Victoria County except the Parish of Drummond and the town of Grand Falls (see Edmundston)

Appendix 6: Changing Your Mind or Correcting an Error

Sometimes a petitioner changes his or her mind after filing the petition, decides to stop proceedings, or needs to correct a mistake on a document. This is what you should know:

- If you want to stop the process after you begin the divorce, contact the Registrar's Office. You must file a **Notice of Discontinuance** (Form 25A) with the Registrar's office and have a copy served on the respondent. See Example E.14 below.

Example E.14. Notice of Discontinuance

Court File Number **1301-0000**

IN THE COURT OF QUEEN'S BENCH OF NEW BRUNSWICK
FAMILY DIVISION
JUDICIAL DISTRICT OF MONCTON

BETWEEN [29] :

Marie Smith
PETITIONER

-and-

Robert Smith
RESPONDENT

NOTICE OF DISCONTINUANCE (FORM 25A)

The petitioner wholly discontinues this action.

DATED at ....., this ..... day of ..... 20...

Marie Smith

Marie Smith
2 Poplar Street
Moncton, NB E1C 3B3

[29] *If you filed a Joint Petition for Divorce, both parties are petitioners. Wherever 'Respondent' is used in an example, change it to 'Joint Petitioner'.*

- You can discontinue the proceedings at any time before the close of the pleadings. The pleadings close when you serve a Reply on the respondent (after the respondent has served you with an Answer) or when the time has expired for you to serve a Reply on the respondent.
- Once the respondent files an Answer, you must have the respondent's written consent or permission of the court to discontinue the proceedings.
- If your circumstances change, you discover you made a mistake or left something out, you can change your petition after you file it. You can do this by "**amending**" your original petition. To amend your petition, you must fill in a new **Petition for Divorce** and give it the **same court file** number as the original petition. Write "**AMENDED**" across the title of the form, and underline all the changes.
- On the amended petition, you must complete the **Declaration of the Petitioner** on the last page and include the attachments from the original petition - even the **marriage certificate**.
- File the amended petition at the Registrar's office. The Deputy Registrar will issue the amended petition and return the original to you. Then, serve a copy of the amended petition on your spouse by personal service (See Step 3.) There is no fee to file the amended petition.
- If you want to change your petition after you have been served with an answer, you need your spouse's consent or the court's permission. In this case, see a lawyer.

Incomplete Applications

Sometimes after the petitioner has filed the Trial Record with the Court, the Court returns the documents because the Trial Record is incomplete. There is a **$10 fee** if a judge tells you to resubmit your Trial Record because it is incomplete! Some common reasons that the court might return your documents, include, but are not limited to:

- you did not set out precisely in Paragraph 1 of your Petition everything you wanted the Court to include in the divorce judgment,
- your claim Paragraph 1 does not agree with what you requested in Paragraph 7,
- you did not include the necessary attachments such as an original marriage certificate,
- you waited too long to serve the petition,
- you did not provide the Court with proper proof of service,
- your affidavit of evidence was not witnessed by a Commissioner of Oaths,
- your affidavit of evidence was witnessed but you waited too long to file your trial record,
- the Joint-Petitioner did not sign the Joint Petition or the affidavit of evidence.

Appendix 7: Preparing and Completing Forms and Documents

This section contains more information about creating your forms and documents.

Style of Proceeding

Each case before the court has a title. That is how the court identifies cases. When you are creating the necessary documents and forms relating to your divorce proceeding, they must all have the same title. This is called the "style of proceeding". Only the name of the document changes (blank 5).

Example of a Style of Proceeding

Court File Number: 1301_____ 1

IN THE COURT OF QUEEN'S BENCH OF NEW BRUNSWICK
FAMILY DIVISION
JUDICIAL DISTRICT OF _____ 2

BETWEEN _____ 3

PETITIONER

- and -

_____ 4

RESPONDENT

_____ 5

1 The Registrar gives you a **court file number** when you file the Petition for Divorce. You must put this number on every document relating to your divorce.

2 Put the **judicial district** where you will file the documents. Your judicial district is the place in New Brunswick where either spouse ordinarily resides for at least a year before applying for divorce. If you both live in NB, it is normally filed where the petitioner resides. If you have recently moved, you may need to apply in the former district. If there is a court hearing, it will be in this district. There are eight judicial districts in New Brunswick. See Appendix 5 for a list.

3 Write your full name here (you are the *petitioner* – the one who turns in the petition).

4 Write your spouse's full name here (your spouse is the *respondent* – the one who can respond to the petition). Note: in a joint petition, the parties are the petitioner and joint petitioner.

5 Write the name of the document and the form number (if there is one) here. For example: Affidavit, Request for Divorce (Form 72K), Index, etc.

What is a Clearance Certificate?

A Clearance Certificate is proof you or your spouse have not previously initiated divorce proceedings. The Central Registry in Ottawa receives all Petitions for Divorce in the country. It makes sure that no other Petition for Divorce involving the same people has been filed in any other court in Canada. Once you begin a divorce process in New Brunswick or elsewhere in Canada, the file remains active, no matter how long ago it was started. The file is not automatically closed or discontinued. The Registry will issue a Clearance Certificate if there are no other pending divorce proceedings that you or your spouse previously initiated in Canada. If you receive a Clearance Certificate, it means that the Registry has allowed your Petition for Divorce to proceed to the next step. **This is not your divorce judgment! It does not mean that you are divorced.**

If you do not receive clearance, it means that there is a pending divorce proceeding that you or your spouse filed in another court in Canada. The Central Registry will notify both courts. The Registrar of the court where a spouse filed the first Petition will notify that spouse. When one Petition is discontinued, then the other will receive a Clearance Certificate.

Affidavit of Evidence

An affidavit is a signed written statement of facts that you swear or affirm is true. Although the affidavit is not a form, you should put the "style of proceeding" at the top of it. Making an affidavit is like being a witness in court and answering questions that a judge would ask; only you write down your evidence instead of saying it. An affidavit is not a form. It is a statement that you prepare yourself. It is important to be sure that everything you say in your affidavit is true. Making a false statement in an affidavit is a criminal offence.

When preparing an affidavit, you should

- Put your statements in separate paragraphs.
- Cover one and only one statement of fact in each paragraph.
- Number your paragraphs.
- Include only facts.
- Stick to facts about which you have personal knowledge.
- Stick to statements about facts that are not controversial. In this case, explain where you got your information (for example, give the name of the person who told you) and say that you believe the information.
- Include all relevant facts.
- Do not put in accusations, arguments or irrelevant statements.
- Use clear, unemotional language.

Information Required in Your Petitioner's "Affidavit of Evidence"

If the Respondent did not serve you with an Answer and you would like to proceed by way of affidavit evidence rather than an oral hearing, you need to prepare a **Petitioner's Affidavit of Evidence**. You have to include certain information in your affidavit (see below). *If you are proceeding by way of court hearing, do not prepare an affidavit.*

If you filed **Form 72A – Divorce Petition by one spouse**, you must include all the following information in your affidavit. If you filed **Form 72B - Joint Petition for Divorce**, you must include items **(a)**, **(c)**, **(d)**, **(e)**, **(f)**, **(g)**, **(i)**, **(k)**, and **(l)** and also complete items **(g)**, **(k)** and **(l)**. Your affidavit must refer explicitly to both spouses. In either case you must complete **(n)** if you wish the divorce to take effect earlier than the thirty-first day after the judgment.

a. Identify the spouses involved in the divorce proceeding. Also establish that at least one spouse was ordinarily resident in New Brunswick for at least one year immediately before the proceeding began.

b. Give your spouse's last known address and say how you know the address.

c. Give enough information for the court to be satisfied that there is no possibility of reconciliation between spouses, or that in the circumstances it would clearly not be appropriate for the court to satisfy itself of such possibility.

d. Confirm that all the information in the Petition for Divorce is correct, except what you may have specified to the contrary in the affidavit.

e. If you could not put a marriage certificate with your Petition for Divorce, either put a certificate of marriage with your affidavit or say what efforts you made to get a certificate and why it is impossible to get one. In this case you must also state the date and place of marriage and enough facts to prove the marriage.

f. Set out the reason for the breakdown of the marriage that is the ground for divorce. If you are asking for a divorce because of separation, state "the Respondent and I separated on the ___day of ___, 20__ and have remained separate and apart since that date. This has resulted in a permanent breakdown of the marriage. On the date of separation and continuously since then it has been the intention of the Respondent and myself to remain separate and apart." If you tried reconciling since the breakdown of the marriage, but not for a period of more than 90 days, put this information in as well. Also, if it was your intention to remain separate and apart, but it was not your spouse's intention, state that it was "my intention to remain separate and apart."

g. State that there has been no agreement or conspiracy to which you are, either directly or indirectly, a party for the purpose of subverting the administration of justice, including any agreement, understanding or arrangement to make up or hide evidence or to deceive the court.

h. [Adultery and cruelty. **This item should not apply if you are using a one-year separation as the reason for the breakdown of the marriage.**]

i. Explain the present and proposed custody and access arrangements for each child, if they are different from what you put in the petition for divorce.

j. If you are claiming spousal support, explain your needs and your spouse's ability to pay, referring to the Financial Statements filed. Set out any change in circumstances since the Financial Statements were filed.

j. 1. If you are claiming child support, explain the circumstances that support your claim, referring to the Financial Statements and income information filed. Set out the details of any change in circumstances since the Financial Statements and income information were filed.

k. If you are not claiming a division of marital property, confirm that you do not want to claim a division of property at this time. State that you are aware that no application for a division of property under the *Marital Property Act* can be made more than 60 days after the divorce takes effect except in the circumstances in subsection 3(4) of the *Marital Property Act*.

l. If you want the judge to include the provisions of a domestic contract, separation agreement, minutes of settlement, previous court order or any other document in the divorce judgment, refer to the agreement as an exhibit and write down the section number and exact words that you want included.

m. If you claim court costs, set out enough facts to let the court decide whether to award costs.

n. If you are asking to have the divorce take effect earlier than the thirty-first day after the judgment, set out the special circumstances that justify the earlier date. You need to include an **Agreement Not to Appeal** (Form 72L) – **See Example E.12**. Note: Thirty-one days is a reasonably short period, so there must be some exceptional circumstance before then that is special enough for the court to make an exemption for you. This is rarely granted.

To prepare your affidavit, see **Example E.11 - Petitioner's Affidavit** (for a Petition for Divorce by one spouse) or **Example E.15 in Appendix 1 - Petitioners' Affidavit** (for a Joint Petition for Divorce). You can review these samples and modify your affidavit to fit your particular situation.

Swearing to Documents

If you prepare an affidavit or a financial statement, you must take them to a person who is a **Commissioner of Oaths.** A Commissioner of Oaths is a person with authority to witness a sworn statement. You must sign the documents and swear that the information in them is true, to the best of your knowledge, in front of the Commissioner of Oaths. Then the Commissioner of Oaths will sign and date the documents.

Finding a Commissioner of Oaths

All lawyers are Commissioners of Oaths. A number of other people may also be Commissioners of Oaths.

- Look under "**Lawyers**" in the Yellow Pages (in New Brunswick all lawyers are commissioners of oaths.)
- Find a person authorized by the provincial government to act as a commissioner of oaths. Call Consumer Affairs at 506-453-2659.

Appendix 8: Getting Ready for the Court Hearing (if there is one)

Here is a brief overview of what happens and what to do at a Court Hearing:

A court official will call your name. Stand up. The judge will ask you if a lawyer is representing you. If your spouse is contesting the divorce, you should have a lawyer represent you. After confirming that you are acting on your own behalf, the judge will ask you to take the witness stand. You will have to swear an oath that you are speaking the truth. The judge will ask you the following:

- your name and address.
- if you are the *Petitioner* - the person who applied for a divorce.
- if there is any possibility of reconciliation with your spouse.
- what custody, access and support arrangements you have made for any children of the marriage.
- what arrangements you have made for the division of marital property.

If you settle the issues related to the marriage and you give the court enough accurate information, the judge will give a **Divorce Judgment** granting the divorce.

Tips for the Court Hearing

- Reread all the documents that you or the other spouse filed with the Clerk/Administrator before you go. Bring a copy with you.
- Wear appropriate clothes. There is no dress code for the public at court, but you should avoid jeans, t-shirts, revealing clothes and flashy jewelry. In deciding what to wear, respect the decorum of the court.
- Be early. Arrive about 15 minutes before court starts.
- Stand up when the judge enters the courtroom. Remain standing until the judge sits down. Stand when you speak.
- Speak clearly and loud enough for the judge to hear you.
- Be respectful to the judge. When the judge speaks to you, always address the judge as "Justice", "Mr. Justice" for a man, or "Madam Justice" for a woman. If you know the judge's last name, call him "Mr. Justice _____" or her "Madam Justice _____".
- Do not interrupt the judge or anyone else when they are speaking.

Appendix 9: Useful Family Law Publications

Stay Informed

PLEIS-NB can provide you with other information about family law. For copies of these publications, contact PLEIS-NB at the address below.

- *The Marital Property Act of New Brunswick (free)*
- *Custody & Access in New Brunswick (free)*
- *Divorce Law: Questions and Answers (free)*
- *For the Sake of the Children (free)*
  A free information program for parents living separately – 1-888-236-2444
- *Family Support Orders Service (free series of booklets)*
- *Court-ordered Evaluations Support Program (C-OESP) (free)*
- *Parenting: Rights and Responsibilities (free)*
- *Child & Spousal Support (free)*
- *When Couples Separate (free)*
- *How to Apply for Custody, Access & Support in New Brunswick ($10)*
  A guide to the procedure of applying for custody, access and support for parents who cannot reach an agreement and cannot afford a lawyer. There is a charge for this guide.
- *New Brunswick Child Support Variation Kit (free 1 copy)*
  A kit for parents with an existing child support order, who wish to vary support because of substantial change in circumstances.
- *Financial Statement and Income Information (free)*
  Explains income information and how to complete a Financial Statement (Form 72J).

Please contact us at:

Public Legal Education and Information Service of New Brunswick

P.O. Box 6000
Fredericton, NB E3B 5H1
Telephone: (506) 453-5369
Fax: (506) 462-5193
Email: pleisnb@web.ca
www.legal-info-legale.nb.ca